(27,170)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 415.

PHILADELPHIA AND READING RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

MARGARET L. HANCOCK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1 *Claim Petition for Compensation by Dependents of Deceased Employe.* (*Section* 413.)

Pennsylvania Department of Labor and Industry, Workmen's Compensation Bureau, Harrisburg, Pa.

[Seal State Workmen's Compensation Bureau.]

Claim Petition No. 740.

MARGARET L. HANCOCK (Claimant)

vs.

PHILA. & READING RAILWAY CO. (Defendant).

July 15, 1916.

To the Workmen's Compensation Board of Pennsylvania:

The claimant respectfully alleges the following facts:

(1) That (Name of deceased employe) John R. Hancock died on (Date of *birth*) March 15, 1916, as the result of an accident occurring in the course of his employment.

(2) The dependents are as follows:—

Name.	Residence.	Relation to deceased.	Year, month, day of birth.	Nationality.	Language spoken.
Margaret L. Hancock	Gordon, Pa.	Wife	1883, March 15	Born in U. S.	English
Leo. T. Hancock	"	Son	1905, June 30	"	"
Herbert "	"	"	1906, Nov. 12	"	"
Violet "	"	Daughter	1909, March 13	"	"
Edith Hancock	"	"	1910, Sept. 12	"	"
John "	"	Son	1913, Sept. 10	"	"
Margaretta Hancock	"	Daughter	1916, Feb. 6	"	"

(If a dependent is a widower or widow, state also residence at date of employe's death.)

2 (3) If a claimant is a widower, widow not living with the deceased employe at the date of death, father, mother, brother, sister, step or adopted child or child to whom the deceased employe stood in loco parentis, state how and to what extent the deceased contributed his or her support and if the claimant is a widower, also state how and why he is incapable of self-support.

(4) There are the following surviving relatives, who are not dependents:

Name.	Day, month or year of birth.	Relationship.	Residence.	Nationality.
Jane Hernberger, née Hancock	21 Dec., 1867	Sister	Reading, Pa.	Born in U. S.
Elizabeth Paul, " "	18 March, 1870	"	Gordon, Pa.	"
Hettie Mifler, " "	25 March, 1872	"	Reading, Pa.	"
Caroline Omlor " "	15 June, 1875	"	Lancaster, Pa.	"
Bertha Kehlor " "	11 Sept., 1880	"	Gordon, Pa.	"

Reason why not dependent: All the above named sisters are above the age of sixteen years and married.

2 (3) If a claimant is a widower, widow not living with the deceased employe at the date of death, father, mother, brother, sister, step or adopted child or a child to whom the deceased employe stood in loco parentis, state how and to what extent the deceased contributed to his or her support and if the claimant is a widower, also state how and why he is incapable of self-support.

(4) There are the following surviving relatives, who are not dependents:

Reason why not dependent: All the above-named sisters are above the age of sixteen years and married.

3 The following are not dependents:

(*a*) A widow not living with or dependent upon the deceased at date of death.

(*b*) A widower capable of self support and dependent upon the deceased at date of death.

(*c*) A step or adopted child or a child whom the deceased stood in loco parentis, who was not a member of the household of the deceased at date of death.

(*d*) A parent or parents not dependent upon deceased at date of death.

(*e*) A brother, sister, child, or adopted or step child over the age of 16 years.

(5) By whom was the deceased employe employed at the time of the accident? Phila. & Reading Ry. Co. (Give name, address, place of business and business address.) If the deceased employe was not directly employed by the defendant, state by whom he was employed, the work on which he was engaged, his place of work, and the relation between his direct employer and the defendant.

(6) Where did the accident happen? #4 siding, Locust Gap Colliery.

(7) When did the accident happen? 1916, March 15, abt. 3:30 P. M. (State year, month, day and hour.)

(8) What kind of work was the deceased employe doing at the time of the accident? Trainman engaged in cutting cars. (If he was not actually at work at the time of the accident, state why he was at the place of the accident and what he was doing there.)

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* If the claimant is a non-resident alien dependent, this information is only required when there is a surviving widow, widower, child, or children, not dependent under (*a*), (*b*) and (*e*).

4 (9) Give a full description of the accident and state how it caused the death of the deceased employe. While engaged

in cutting cars another draft of three cars following main train bumped into rear of main train and caught deceased employee and killed him.

(10) Did the deceased employe receive medical, surgical, or hospital services? Dr. Farquhar of Locust Gap was called but deceased employee was dead before *before* the doctor arrived. (If so, give name and address of attending physician or surgeon, or of the hospital.)

(11) What were the expenses of the last sickness and burial? Burial expenses $97. Has the employer paid any part of these, if so, how much? No.

(12) What were the weekly earnings of the deceased employe for the year before the accident? $18. per week. For whom was he then working? Phila. & Reading Railway Co. Number of weeks employed during that year? 52. At what trade or occupation? Trainman. What were his weekly wages when injured? $18. per week. (If paid by piece, state weekly earnings.) How were these wages payable? (Weekly, half monthly, or monthly.) Half monthly.

(13) Was compensation paid to the deceased employe between the date of accident and his death? If so, state day, month and year when the payments began and ended and their total amount.) No.

(14) Did deceased employe serve notice of his injury upon his employer within fourteen days? (If notice was not served within fourteen days after injury, state fully the reasons for not doing so.)

(15) What other facts are there which you believe important?

5 Wherefore the claimants asks that your honorable Board shall make an award that the defendant shall pay to them such compensation as may be due them under the alleged facts.

MARGARET L. HANCOCK,
Claimant.

Subscribed and sworn to before me, this 15th day of July, 1916.
WM. M. MARSH, *N. P.* [SEAL.]

My commission expires on 20th day of March, 1919.

(This affidavit may be sworn before a Compensation Referee or any other person authorized to administer an oath.)

NOTICE.—This petition may be signed and sworn to by any dependent for himself and all other dependents.

Defendant's Answer to Claim Petition.

(Section 414.)

Pennsylvania Department of Labor and Industry, Workmen's Compensation Bureau, Harrisburg, Pa.

Claim Petition No. 740.

MARGARET L. HANCOCK, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

August 1, 1916.

In answer to the claim petition No. 740.

1. The defendant denies the following facts alleged in the claim petition, To wit, the averments of paragraphs 2, 9, 11 and 12.

6 2. The defendant states the following additional facts not alleged in the claim petition.

3. The defendant denies that he is liable to pay compensation under the facts alleged in the claim petition, for the following reasons, Because the decedent and defendant, at the time the former was injured, were engaged in interstate commerce.

PHILADELPHIA AND READING RAILWAY COMPANY,
[SEAL.] By W. C. BRISTER,
Claim Agent, Defendant.

Address: Reading Terminal, Phila., Pa.

Subscribed and sworn to before me, this 2nd day of August, 1916.
[SEAL.] J. V. HARE,
Notary Public.

My commission expires on the 1st day of March, 1919.

(This affidavit may be sworn to before a Compensation Referee or any other person authorized to administer an oath.)

Filed in Supreme Court June 9, 1919, Philadelphia.

Q. Are these children being maintained and supported by you?
A. Yes, sir.
Q. What was the expense of the funeral of your husband?
A. Ninety-seven dollars.
Q. Do you know how your husband met his death?
A. He was squeezed between two cars.

Mr. Parry: You were not there, were you?

Q. You know that from what you were told; of your own knowledge you do not know?
A. No

Mr. Parry: Objected to.

Q. What were your husband's wages; what was your husband earning per week at the time he met his death?
A. He worked six days a week and earned three dollars a day.
Q. But it approximated about $18 a week?
A. Yes, sir.
Q. State whether or not some weeks that might have been more and others less.
A. Yes sir.
Q. But it approximted about $18 a week?
A. Yes sir.
Q. How was he paid—monthly or semi-monthly or weekly?
A. Monthly.
Q. I mean, was your husband paid once a month or every two weeks?
A. Every two weeks.

By Mr. Mackey:

Q. How long had your husband been working for this company?
A. About 13 or 14 years.
Q. Had he been working for the company continuously for six months previous to his death?
A. Yes.

By Mr. Reick:

Q. Have you received any moneys from the Philadelphia and Reading Railway Company since your husband's death?
A. No, sir.
Q. I believe you did receive such wages as were due him at the time of his death, did you not?
A. Yes sir.
Q. The wages that he had earned up to the time of his death you received from them?
A. Yes, sir.
Q. And that is all the money you received?
A. Yes, sir.

Q. Has the $97 or any part of the $97 been paid to you?
A. No, sir.

Mr. Reick: I refer to the $97 for the funeral expenses.

Cross-examination.

By Mr. Parry:

Q. Your husband was paid by the hour, was he not?
11 A. Yes, sir.
Q. How much an hour?
A. Thirty cents.
Q. How long was his working day?
A. Ten hours.
Q. If he worked more than 10 hours, did he get overtime?
A. Yes, sir.
Q. Did he earn overtime sometimes?
A. Yes, sir.
Q. He was a member of the Railway Relief Association, was he not?
A. Yes, sir.
Q. Did you not get a payment after his death on that account?
A. Yes, sir.
Q. How much was that?
A. Six hundred dollars.

Redirect examination.

By Mr. Reick:

Q. This $600 that you say you received from the Relief Association, that is an insurance association maintained in connection with the railway company, is it not?
A. Yes, sir.
Q. And for that a certain premium was taken off; either semi-monthly or monthly, from your husband's wages?
A. Yes, sir.
Q. What rate was taken off per month for that $600, if you know?
A. A dollar and a half.
Q. A dollar and a half was taken off monthly as his contribution toward membership in that Relief Association?
A. Yes, sir.

CHARLES A. CONSTANTINE, called and sworn:

Examined.

By Mr. Reick:

Q. Where do you live?
12 A. Gordon.
Q. Where did you live on the 15th of March, 1916?

A. Gordon.
Q. By whom were you employed?
A. Philadelphia and Reading Railway Company.
Q. In what capacity?
A. Conductor.
Q. By whom and in what capacity were you employed on the fifteenth day of March, 1916?
A. Employed by the Philadelphia and Reading Railway Company as conductor.
Q. You may tell us whether or not the duties incident to your position placed you in charge of the movement of coal trains.
A. Yes, sir.
Q. Do you recall whether or not, on the fifteenth day of March, 1916, John R. Hancock was a member of your crew?
A. Yes.
Q. In what capacity?
A. Trainman.
Q. And the location of your crew was where? I mean, from where did your crew move out?
A. We worked between Gordon and Locust Gap Colliery.
Q. The point I have in mind is, that your central starting point was Gordon, was it?
A. Gordon.
Q. Have you any recollection of an injury that resulted in the death of Mr. Hancock on the 15th of March, 1916?
A. Yes, sir; he was killed on my train.
Q. Where?
A. Locust Gap Colliery.
Q. On the line of the Philadelphia and Reading Railway Company?
A. Yes, sir.
Q. And while he was in the employ of said company?
A. Yes, sir.
Q. State whether or not his death occurred while he was in the prosecution of the duties of his employment.
13 A. It did; yes, sir.

Mr. Parry: That is a conclusion, I think.

Mr. Mackey: Ask him what he was doing.

Q. What was he doing at the time of his death?
A. He was supposed to be cutting the cars. He pulled a draft of cars out from the colliery, and he was on the rear car to cut loose when we stopped.
Q. Go on and tell us all the facts you have relative to his death.
A. When we stopped our train for the cut, we felt a bump on the rear end, and one of the boys said, "There is something wrong back there," and I got out; I was on the left hand side of the engine, looking for signals on my side; it was in a curve, and you could not see the signals properly. So I got out and went back, and when I

did, the front brakeman came running and said Hancock had been killed, caught between the cars.

Q. Did you go back and see the body?

A. Yes, sir.

Q. What was Mr. Hancock's condition when you got back?

A. It appeared as though there was a little life there yet, but he was entirely unconscious.

Q. How long after you got back there was it before life was extinct?

A. We carried the body into the storehouse and sent for Dr. Parker. I suppose it may have been 20 or 30 minutes till he came there, and he pronounced the man dead when he came.

Q. This train you were hauling that day, where did you get that train?

A. Locust Gap Colliery.

Q. And where did you haul the train to and finally surrender or deliver up the train?

A. Locust Summit yard.

Q. How many cars were in the train?

A. I think there were nine or ten; I could not just say the exact number; it is too long to remember; I have no record.

14 Q. We will get to that a little later on. This train that you picked up you got at Locust Gap Colliery and you hauled it to Locust Summit, you say?

A. Yes, sir.

Q. What is the distance from Locust Gap Colliery to Locust Summit?

A. Two miles.

Q. In what direction?

A. In each direction; it is two miles from the colliery to the Summit.

Q. Both Locust Gap Colliery and Locust Summit are in Northumberland County, this State?

A. Yes, sir.

Q. When you got your train to Locust Summit yard, just tell us what you did with that train.

A. We back it into the yard and we go in to the yardmaster and tell him what we have, so many cars for different scales, and ask him where to put them, and he instructs us then on what tracks he wants them, and we switch them on the tracks that he instructs us.

Q. As I understand you, certain of these cars you switched on one track and certain of the cars you switched on another track?

A. Yes, sir.

Q. At the direction of the yardmaster?

A. Yes, sir.

Q. From whom you were to take such orders?

A. Yes, sir.

Q. You did not leave it stand, then, on the main road, as a solid train?

A. No, sir.

Q. But your train was broken up and switched on different tracks, according to orders that you received from the yardmaster?

A. Yes, sir.

Q. At the time you took these cars from Locust Gap Colliery, tell us how or in what manner information was given you as to the location or destination of these cars.

15 A. We get a ticket from the shipping clerk at the colliery, stating where the cars are to go to. Part of the train was shipped from Locust Gap Colliery to Shamokin scale, and part from Locust Gap Colliery to St. Clair scale.

Q. I show you a blank ticket, for the purpose of identification, numbered Form 1285. Now, not speaking of any writing that is on it, but exclusively as to the form, is that the form of ticket you received at Locust Gap Colliery?

A. That is the form of the car shipped to St. Clair scale.

Mr. Parry: Were not these cars taken to Shamokin scale?

Mr. Reick: Some to St. Clair and some to Shamokin.

Mr. Parry: I thought he said they only went to Locust Gap.

Mr. Reick: He took them to Locust Summit. Some were consigned to Shamokin and some to St. Clair scale.

Q. When you received your tickets for this train at Locust Gap Colliery, was there more than one form or character of ticket given you?

A. Two characters of ticket.

Q. Without regard to any inscription or writing on it, but solely as to form, were you given any tickets of that character (indicating)?

A. Yes, something similar to that, about similar to that.

Q. And where were the cars covered by that form of ticket——

Mr. Parry: Have you not subpœnaed these records?

Mr. Reick: Yes, but I have not subpœnaed them from this witness, because he does not have them in his possession. The testimony was that he parted with them.

Mr. Parry: Cannot he identify the ones he had?

Mr. Reick: We do not have the originals. They are exclusively within your control.

Mr. Parry. You subpœnaed them. We have them here.

Q. You say you had two forms of ticket?

A. Yes sir.

Q. The one form, known as form 1285, was for cars consigned to St. Clair scale?

16 A. St. Clair scale.

Q. And the other, known as form 1262, consigned to Shamokin scale?

A. Yes sir.

Q. When you surrendered your train as you have indicated, by shifting some cars on one track and some on another at Locust Summit, what did you do with the tickets?

A. Gave them to the yardmaster.

Q. Was he the proper person to receive these tickets?

A. Yes sir.

Q. Did you have, as evidenced by the shipping instructions or tickets, in your train that day, that you hauled from Locust Gap Colliery to Locust Summit, any cars consigned to any point beyond the State of Pennsylvania?

A. No, sir.

Q. What is at Locust Summit? You say you took the cars to Locust Summit and put some cars on one track and some on another track. What is there at Locust Summit that causes you to do that?

A. Locust Summit is a yard where they receive the cars from the colliery.

Q. How far is Shamokin scales from Locust Summit, to your best judgment?

A. It is between 11 and 12 miles.

Q. And that is in Northumberland County, this State?

A. Yes, sir.

—. How far distant from Locust Summit is St. Clair scales?

A. That I do not know; I guess about between 25 and 30 miles, by way of Mahanoy Plane.

Q. And St. Clair scales is where?

A. In Schuylkill County.

Q. This State. If you had the original tickets that you received at Locust Gap Colliery that day, would you be able to identify them?

A. I would not be able to identify the numbers of the cars, because I would not know them. I would be able to identify that class of ticket.

Mr. Reick: Will you let us have the original tickets, please?

(Papers produced by Mr. Parry.)

17 Q. Witness shown ticket on form No. 1262, bearing the serial number 68, purporting to be a Western gondola car shipped by the Philadelphia and Reading Coal and Iron Company per the Philadelphia and Reading Railway Company, under date of March 15th, 1916. Do you recognize that as one of the tickets that were handed to you at Locust Gap Colliery that day?

A. Yes, sir; it is similar to the ticket that was handed to me, excepting there was no writing underneath this space.

Q. Down to the heavy dotted line immediately above the words, "Do not write in this space," do we understand you to say when the ticket was furnished to you, that space was blank?

A. That space was blank.

Mr. Reick: And that reads as follows: "From Locust Gap Colliery to Shamokin Scales. Car number, 73045. Initial, L. S. M. S. Order number, 1649," and under the figures 1649 the initials "MC." Below the space and in the space testified by the witness as being blank at the time the ticket was furnished to him appears the following: In the lower left hand corner, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916." The Commission will observe

that is one day subsequent to the date of the movement of the train and the original date on the ticket. Underneath that, "Philad'a & Reading Ry. Co." In the center, "2728A," and in the upper right-hand corner of the blank space, the same numbers, "2728A" and the words, "Ebner & Whaling, Webster, N. Y." Underneath that the letters "N.Y.C." and "Freight prepaid. O. K. 38.15."

Q. Witness shown same form, serial number 71, same character of ticket, same date. Do you identify that as one of the tickets that you remember were handed you that day?

A. Similar to the ones, that is.

Mr. Parry: What car number is that?

Mr. Reick: 70244. This is a car consigned from Locust Gap Colliery to Shamokin Scales. Car number 70244. Initials, "NYC." Order number, 1349. Underneath that, the initials "LA."

18 Q. Is your testimony the same with regard to the blank space?

A. Yes, sir.

Q. There was nothing written there at the time it was handed to you?

A. No, sir.

Mr. Reick: In the lower left-hand corner the figures "165;" beneath that, "5866R." With a stamp or stencil, "P. & R. C. & I. Co." "Rochester. Yds. for Orders. Rochester, N. Y. Via Lyons & N. Y. C. & H." Also with stencil, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." Some writing, four lines, on the lower right-hand corner of the blank space, erased with lead pencil, not legible. The words "Freight prepaid. 35.11."

Q. Witness shown similar ticket in the same form, 1262, bearing the serial number 59; same date, March 15th, 1916. Do you identify that as one of the tickets you had that day?

A. Yes, sir.

Q. Is your testimony the same with regard to the blank space?

A. Yes, sir.

Q. No writing in the blank space?

A. Not that I remember.

Mr. Reick: Consigned from Locust Gap Colliery to Shamokin Scales. Car number, 409568. Initial, NYC. Order number, 1 HTD. Underneath that the words "J. E. Turk." Beneath that, "N. B. Jct." In the blank space, "J. E. Turk, N. B. Junction." With a stencil or stamp, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Phila'a & Reading Ry. Co." In the extreme lower right hand corner, "40.00."

Q. Witness shown similar form, 1262, serial number 31, same date, March 15th, 1916. Do you identify that as being one of the tickets you had that day?

A. Similar.

Q. And your testimony with regard to the blank space is the same, that nothing was written below the words, "Do not writ in this space"?

19 A. Nothing.

Mr. Reick: Shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number, 57124. Initial, P. & R. Order number, 1645. Beneath that the letters "HA," and in the blank space the following in the extreme left corner, in pencil, "105, 2195." In the center, "821H." The same figures appear in the extreme upper right hand corner in the blank space, "821H." With a stamp, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." In pencil, "C. T. Dennis, New Columbia, Pa.," and the figures "20.18."

Q. Witness shown similar form, 1262, same date, March 15th, 1916, serial number 65. Do you identify that as one of the tickets you had that day?

A. Similar to it; yes, sir.

Q. Is your testimony the same with regard to the blank space, nothing written in it?

A. Nothing written in it; no, sir.

Mr. Reick: The figures in pencil in the left corner, "190." Beneath that this addition: $\begin{array}{r} 7600 \\ 133. \\ \hline 7733 \end{array}$ With a stamp, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." In the center, at right angles with the printed matter on the ticket, the word "Roch." With a stamp, "P. & R. C. & I. Co. Rochester." Following the word "Rochester," written on with pencil, "Yds. for orders." Beneath that, with a stamp, "Rochester, N. Y. via Lyons & N. Y. C. & H." In pencil, "40.14."

Q. Witness shown similar form, 1262, same date, March 15th, 1916, serial number 70. Do you identify that as one of the tickets you had that day?

A. Similar to them.

Q. And is your testimony the same with regard to the blank space, nothing written in at the time you turned it over?

A. Yes, sir.

Mr. Reick: Shipment of a car from Locust Gap Colliery to Shamokin Scales. Car Number, 76820. Initial, N Y C. Order

20 number, 1649. Immediately beneath that, the initials "MC. In the blank space in the lower left hand corner the figures "275," and this addition: $\begin{array}{r} 6318 \\ 3610. \\ \hline 9928 \end{array}$ With a stamp, "Weighed & Way Billed, Shamokin Scales, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co. Freight prepaid." In the center at right angles with the printed matter, "2318D." The same figures also appear in the upper right hand corner of the blank space, in pencil, and the following in pencil: "E. S. Adsit Coal Co. Burling-

ton, Vt. NYC Norwood N. Y. & Rut. R. R." Beneath that the figures "36.02," evidently meaning $36.02.

Q. Witness shown similar form, 1262, with the word "Washery" written on the top; same date, March 15th, 1916. Serial number, 61. Do you identify that as one of the tickets?

A. Similar to it; yes, sir.

Q. And your testimony with regard to the blank space is the same?

A. Yes, sir.

Mr. Reick: Showing the shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number, 38071. Initial, N.Y.C. and instead of order number——

Mr. Parry: I will admit that in all of the defendant's tickets which Mr. Constantine had, there was nothing written under the line.

Mr. Reick: Do you further admit that the shipping directions on all these tickets appear under the date of March 16th, the day subsequent?

Mr. Parry: Whatever is on them.

Mr. Reick: That is a matter for us to prove. Order number 77, car from Locust Gap to Shamokin Scales, March 15th, 1916. Weighed & Way Billed at Shamokin Scales, March 16th. Signed, "A. M. Hollis Co., Canandaigua, N. Y."

Order No. 72. March 15th, 1916. Locust Gap Colliery to Shamokin Scales. Car number, 403999. Weighed and Way Billed at Shamokin Scales, March 16th, 1916. Signed, G. F. Meyers, Nor. Tonawanda, N. Y. N. Y. Erie Dely. Freight Prepaid. 40.—

Q. Witness shown form 201, original way bill. Was that one of the tickets handed you on that day?

A. A hard ticket similar to the one I handled, but a paper ticket I did not handle.

Q. Form 1285 identified by the witness. Serial number, 25. Date, March 15, 1916. Showing shipment of a car from Locust Gap Colliery to the Saint Clair scales. Order No. A, with a stencil, "Dry coal." We will ask you to look at these three.

A. Three similar ones.

Q. Witness shown form No. 1262, serial number 75; date, March 15, 1916, showing a consignment from Locust Gap Colliery to Shamokin Scales. Car number 80841; initial, N.Y.C.; order number, 1647, and beneath that the initials "M.A." with a stencil in the blank space. Your testimony with regard to the blank space is the same?

A. Yes.

Mr. Reick: "Weighed and way billed, Shamokin Scales, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." Consigned to J. D. Buickley & Co., Avis, Pa.

Q. Witness shown form 1262, serial number 37, under date of March 15th, 1916, showing a shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number, 38791. Initial, NYC. Order number, 1422, with the initials "MC" beneath it. Is your testimony the same with regard to the blank space?

A. Yes.

Mr. Reick: In the blank space, with stamp, "Weighted & Way Billed, Shamokin Scales, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." With pencil, "G. F. Meyens, Nor. Tonawanda N. Y. N. Y. C. Erie Dely. Freight Prepaid. 40.10."

Q. Witness shown an identification form 1262, serial number 58, dated March 15th, 1916, showing shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number 52064. Initials, LSMS. Instead of the order number, the word, "Surplus."

22 Your testimony is the same with regard to the blank space?

A. Yes, sir.

Mr. Reick: With the stamp, "Weighed & Way Billed, Shamokin Scales, Pa., Mar. 18, 1916, Philad'a & Reading Ry. Co." Consigned in pencil, "J. E. Turk, N. B. Jct. Pa. 44.02."

Q. At the Locust Gap Colliery from whom did you receive these tickets?

A. The shipping clerk.

Q. What is the name of the clerk?

A. W. E. Quirk.

Q. He was shipping clerk at the Locust Gap Colliery. Do you know by whom he was employed?

A. The Coal and Iron Company.

Q. The Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. State whether or not it was the usual course for you, in moving a train of coal from that or any other colliery, to receive the tickets from the shipping clerk.

A. Yes, sir.

Q. And I believe you did say that when you surrendered your train at Locust Summit, you turned these tickets over to the yardmaster?

A. Yes, sir.

Mr. Scott: Did he say who he was?

Q. The name of the yardmaster?

A. John F. Paul.

Q. By whom was John F. Paul employed?

A. Philadelphia and Reading Railway Company.

Q. That is the company by whom you are employed?

A. Yes, sir.

Q. Did you, in your train that day, have any cars which were ticketed to or consigned, as evidenced by the shipping instructions given you by the shipping clerk at Locust Gap Colliery, any car

in that train consigned to any point beyond the State of Pennsylvania?

A. No, sir.

23 Q. Were any verbal instructions given to you by either the shipping clerk at the Locust Gap Colliery, or by any of your superior officers in the railway company, that any of these cars in that train were for points beyond the State of Pennsylvania?

A. No, sir.

Q. Did you have any knowledge, when you left with your train from Locust Gap Colliery, of any destination other than that indicated on the ticket?

A. No, sir.

Cross-examination.

By Mr. Parry:

Q. How long have you been working around Locust Gap Colliery?

A. Our runs vary.

Q. You are on the Shamokin Division, are you?

A. On the Shamokin Division. I have been working for the railroad company 29 years, and in the colliery service over there perhaps 10 or 15 years.

Q. Then you know the course of business up there thoroughly, I suppose?

A. Yes, sir.

Q. This is the way this thing is always done, is it not, the colliery clerk gives you tickets like this and you take the cars and haul them along towards the scale, and when you get to Locust Summit yard some other engine hauls them to Shamokin scale, is that right?

A. Yes, sir; our duty is to haul them from the colliery to Locust Summit yard, and I do, whatever colliery we are working on.

Q. These cars went to the scale; I suppose there is no doubt of that, is there, these cars went on to the scale?

A. I suppose they did, yes, sir.

Q. What makes you say that these cars were not consigned to points beyond the State of Pennsylvania? Do you mean by that, that this writing on the space here was not there? Is not that what you mean?

24 A. Was not there, yes sir.

Q. All the writing above the words, "Do not write in this space" was there, was it not?

A. Yes, sir.

Q. For instance, the word "Stove," and the car initials, and the capacity, and this "1649 MC" was there, was it not?

A. I will not swear they were there, because the only thing I look at is the car number and initial, but this other item may have been there and very likely was, because they always are there; but I would not swear it was there, because I could not say.

Q. You are just as sure it was there as you are this is the ticket, are you not?

A. Yes, sir, I am sure it was there, but I would not say.

Q. I am taking this first ticket, number 68. Now, the word "Stove" was there, was it not?

A. Yes, sir.

Q. What does that mean?

A. Stove coal.

Q. And this "73045 LSMS" is the car initial and number, is it not?

A. Yes, sir.

Q. This "100" what does that mean?

A. That is the capacity of the car.

Q. I know, but what does "100" stand for?

A. One hundred thousand pounds capacity.

Q. What is this here?

A. That I do not know.

Q. You do not know what "1649" means?

A. No, sir.

Q. Do you know what "MC" means?

A. I know from my experience as yardmaster that "MC" means to furnish cars for a road on the New York Central Railroad.

Q. That weight, I suppose, while it is written above the line, that was not on at the time, was it?

A. No.

25 Q. That is put on at the scale?

A. Put on at the scales, yes, sir.

Q. Order No. 71, the letters "LA," do you know what that stands for, from your experience?

A. No, I do not know; I think "LA" stands for Pennsylvania shipment.

Q. On order No. 31, in the space marked "Order number," the initials "HA," that means a line shipment along the Philadelphia and Reading Railroad, does it not?

A. We never get any "HA" order; that is at the Summit yard, and the cars are not put in in that way, that I know.

Q. Would you say that ticket was not correct?

A. No, sir, but I would not know what "HA" stands for.

Q. I think the other tickets are all "MC." When these colliery shipments are destined to eastern points, they go to the St. Clair scale, do they not, to be weighed and way billed, and when they are destined to western points they go to the Shamokin scales and are way billed?

A. Yes, sir.

Q. Generally speaking?

A. Generally speaking.

Q. You have no scale at the colliery?

A. No, sir.

Q. Or no facilities for weighing or billing coal?

A. Not at the colliery, no, sir.

Q. These tickets, I understand, represent the cars that you had with you on this train that Mr. Hancock was working on at the time he was hurt, is that right?

A. Yes, sir.

Q. Are you familiar with the way the work is operated at Shamokin scales?

A. No, sir; I never get down around there.

Q. You swore to an affidavit in this case, did you not?

A. Yes, sir.

Q. On July 3d, 1917?

A. I suppose that was the date; I do not know just exactly the date.

26 Q. I suppose that the tickets upon which this affidavit was based were the tickets to which you testified here, were they not?

A. Yes, sir.

Q. You had nothing else in mind, did you?

A. Nothing else, no sir.

A. Simply that these car tickets, when you got them, were ticketed from Locust Gap to Shamokin scales?

A. Yes, sir.

Q. There is not anything at Shamokin scales but the tracks and the scale, is there; I mean there is no town there, is there?

A. Oh, yes.

Q. Is it right in Shamokin or beyond there?

A. The scale is right in the yard; Shamokin yard is in the town, of course.

Q. Does a great deal of coal go out there to be weighed?

A. Yes, I suppose so.

Q. What collieries do you haul it from, besides Locust Gap?

A. Haul it from Alaska Colliery, Reliance, Colliery, Enterprise, and Corbin.

Q. How many cars do you suppose you haul a day?

A. Approximately, from Locust Gap, about forty or fifty a day; from Alaska Colliery, only haul about fifteen; Reliance Colliery, about twelve to fourteen; Corbin Colliery, from twenty-five to thirty; Enterprise Colliery, get there only occasionally.

Q. Most of that goes to Shamokin scale, does it?

A. Well, outside of Locust Gap and Reliance Colliery, it most all goes to the St. Clair scale.

Q. About half and half, would it be?

A. About half and half, I suppose.

Redirect examination.

By Mr. Reick:

Q. You said that on one of these forms that was shown to you by Mr. Parry, the initials "MC," from your experience as yard-

27 master, indicated that it was a car intended for shipment to a point on the New York Central Railroad?

A. Yes sir.

Q. And that might equally apply to a car intended for shipment to a point on the New York Central Railroad within the State of Pennsylvania, as without?

A. Just to the shipment, as far as I know, to the New York Central Railroad.

Q. That which goes from your railroad?

A. To the New York Central. It means to apply to New York Central cars in that order.

Q. Mr. Parry would have you say that your affidavit simply said that you hauled cars from Locust Gap Colliery to Locust Summit; but you did say more than that; you said that in the train that you hauled there were none of the cars that were consigned or ticketed to a point beyond the limits of the State of Pennsylvania?

A. Yes.

Mr. Parry: I did not ask him that: I asked him if the tickets on which this affidavit is based were the same tickets as he testified to.

Mr. Reick: And you said, "Then you simply hauled from Locust Gap to Locust Summit." I wanted to clear that impression up.

Q. Mr. Parry would have you testify to the Commission——

Mr. Parry: Is this rebuttal, or what? I cross examined the witness, but I do not think you have any right to cross examine him.

Mr. Mackey: Proceed as rapidly as you possibly can.

Q. Shamokin scales is within a very short distance of the town of Shamokin, which is a large, populous town in Northumberland County, is it not?

A. Yes, sir.

Recross-examination.

By Mr. Parry:

Q. These orders that have "MC" on them did not cover Shamokin coal, did they?

28 A. Did not cover Shamokin coal?

Q. Yes.

A. No, sir.

Q. That coal was going beyond Shamokin, was it not?

A. That is what I said; it meant a car to be applied on the N. Y. C. road, or an N. Y. C. & H. car. That is as far as my knowledge goes, when you get a call for that as a yardmaster we apply an N. Y. C. & H. car on that coal.

Q. That is to get the New York Central cars back on their own road, I suppose.

A. Yes, sir.

Q. And they go up over the road to Newberry Junction and then to the New York Central; that is right?

A. Yes, sir.

By Mr. Reick:

Q. The understanding that you have of the initials "MC" and these other initials that have been referred to, they are part of a code or instructions given to you by your company for the purpose of——

Mr. Parry: Ask him to explain it.

Q. Explain what "MC" is and how you get it and what the effect of it is, and what it means.

A. As a yardmaster you get a code from Mahanoy Plane scale in the evening, calling for the cars for the collieries for the next day, the kind of cars to be furnished. "MC" means that an N. Y. C.—they may call for twenty, "MC" call. That means to furnish them with twenty N. Y. C. & H. cars. They may say five "GK," that means five Pennsylvania cars; and they may say five "MC's;" that means we must furnish them with an N. Y. C. car or car suitable to load to Buffalo dock. That is what I mean by saying that "MC" means to furnish a N. Y. C. & H. car, if possible, to furnish ten or twenty, whatever it means, at the colliery that day, for loading to the N. Y. C. & H. road.

Q. That is instructions you get from a secret code that the company gives to its employes in the position of yardmaster and otherwise, for their instruction, and is not any information that is given to the public or open to the public's knowledge?

29 A. That is right.

By Mr. Parry:

Q. You do not know who may get it, do you; it is given to you, is it not?

A. It is given to me as yardmaster.

Q. Do you know who else it is given to?

A. It is there in the office in the Locust Summit office of the yardmaster.

Mr. Parry: It is tacked up in the office.

Q. Do you ever know of that being given to you in your capacity as a train conductor?

A. No, sir.

Q. Is that information given ordinarily to the train conductors?

A. No, sir.

Q. And the information and the knowledge that you have of this secret code——

(Objected to.)

Q. Is the knowledge that you gained while you were employed by this same company as yardmaster?

A. Yes, sir.

By Mr. Parry:

Q. It is true, no matter how you gained it; there is no doubt about its being true, is it, this information?

A. Yes.

Q. Whether you got it as yardmaster or conductor. Did you ever see it tacked up in the office there when you went in as a conductor?

A. No, sir.
Q. It is not tacked up there?
A. No, sir; it is kept in the drawer.
Q. Is it not tacked up in the scale office?
A. It may be tacked in the scale office; I never was in the scale office.

WILLIAM E. QUIRK, called and sworn:

Examination.

By Mr. Mackey:

Q. What is your full name?
30 A. William E. Quirk.
Q. Where do you live?
A. Locust Gap.

By Mr. Reick:

Q. Where were you employed on the fifteenth day of March, 1916?
A. Shipper at Locust Gap Colliery.
Q. By whom were you employed?
A. Philadelphia and Reading Coal and Iron Company.
Q. Forms 1262, purporting to be tickets for Western gondola cars shipped by the Philadelphia and Reading Coal and Iron Company per the Philadelphia and Reading Railway Company, under date of March 15th, 1916, shown witness. Will you tell us whether or not those tickets are in your handwhiting?
A. That is all in my handwriting.

Mr. Reick: The witness indicates that all on the tickets above the heavy line and the words "Do not write in this space," is in his handwriting.

Q. Tell us, first of all, what the duties of your position are.
A. Shipping coal and making up the outside payroll, and other clerical work.
Q. Then you are the man in direct charge of the shipping of the cars loaded at the Locust Gap Colliery?
A. Yes, sir.
Q. And you were in the pursuit of that employment on the fifteenth day of March, 1916, the date indicated on these tickets?
A. Yes, sir.
Q. And in the course of that employment you did make out these tickets that are known as Form 1262?
A. Yes, sir.
Q. I ask you, first of all, is that a Philadelphia and Reading Coal and Iron Company, or a Philadelphia and Reading Railway Company form?
A. That I could not say; it is a form used by the Philadelphia and Reading Railway Company, a ticket, to ship coal.

31 Q. By whom are these forms furnished you, the Coal and Iron or the Railway Company?

A. The Coal and Iron.

Q. You have heard Mr. Constantine testify, did you?

A. I heard part of his testimony.

Q. Did you hear his testimony with regard to the location of Locust Gap Colliery, when he said it was in Northumberland County, this State? That is correct?

A. Yes, sir.

Q. And he said that it was about two miles distant from Locust Summit, or that Locust Summit was about two miles distant from Locust Gap Colliery, is that correct?

A. Two miles.

Mr. Parry: It does not appear to me that there is the slightest dispute of fact here between Mr. Reick and myself. I thought from his petition that he denied some of the facts. I am perfectly willing to agree to all these facts. I have set them all forth in my answer.

Mr. Mackey: It seems to me you both agree that these cars by this immediate train crew were taken from one point in Pennsylvania to another point in Pennsylvania.

Mr. Reick: Yes, sir.

Mr. Mackey: At the latter point, however, the same cars were re-billed to other points.

Mr. Reick: Yes, that is the proposition.

Q. I believe you did say you are employed by the Coal and Iron Company?

A. Yes, sir.

Q. From what source do you receive the information or the direction to consign these cars, as evidenced by the tickets themselves?

A. I receive my orders by telegraph from the shipping agent at Mahanoy Plane scale, daily.

Q. The shipping agent at Mahanoy Plane scales is employed by what company?

A. I could not say.

Q. Do you know that he is a Coal and Iron Company employee?

A. I could not say.

32 Q. But you did get the instructions that are set forth in these tickets from the shipping clerk at Mahanoy Plane scale?

A. Yes, sir.

Q. To whom did you deliver these tickets?

A. Mr. Constantine.

Q. The conductor of this train?

A. Yes, sir.

Cross-examination.

By Mr. Parry:

Q. You say you wrote all this blue pencil handwriting on here?

A. Yes, sir.

Q. What do the initials "MC" stand for?"

A. Out of State points on the New York Central; out of Pennsylvania, State of New York.

Q. Where did you get that "MC" that you put on there?

A. From the ship-ing agent at Mahanoy Plane scales.

Q. I suppose you use that code very many times daily, do you not?

A. Positively.

Q. How long has that been the code letter for the New York Central points, New York State?

A. I have been in the employ 14 years, and it has been for the last 14 years.

Q. The code letters "HA" on ticket No. 31, what do they stand for?

A. That is a line order.

Q. You mean to a point on the line of the Philadelphia and Reading Railway?

A. Yes, sir.

Q. Has that been in use for a long time?

A. The same number of years; ever since I have been in the service.

Q. The code letters "MA" on ticket No. 75, what do they stand for?

A. "MA" means for points on the Beech Creek Railroad.

33 Q. That is a line owned by the New York Central, is it not?

A. Yes, sir.

Q. It is in Pennsylvania, is it not?

A. No, sir.

Q. Partly in Pennsylvania?

A. Partly in Pennsylvania.

Q. I show you ticket No. 74. You made that out, did you not?

A. Yes, sir.

Q. The date seems to be a little illegible; it says March 20th, 1917. Is that the correct date for that ticket, or is it a mistake?

A. It was a car that had to be re-cleaned or something; I could not just positively say.

Q. It says, "Shop at Shamokin for brake rigging." I suppose that means broken brake rigging?

A. That would be hauled on the siding until they would get it in a safe part of the train to haul.

Q. Was this car which this ticket represents, in this train of Conductor Constantine, do you know?

A. It could have been, yes; it could have been in the train. I may have had my dater set wrong, too, for that date, a clerical error.

Q. This ticket, No. 74, covering New York Central car 79749, was that one of the tickets you gave Mr. Constantine that day despite the fact it is not dated that day?

A. Mr. Constantine would have a better record for the ticket. I could have made a clerical error with my dater there; and if this is Mr. Constantine's slip for that day, he brought it out.

Q. Do you know Mr. Constantine's writing?

A. Yes, sir.
Q. Is that it, that slip I show you?
A. Yes, sir.
Q. Does that car No. 79749 appear on there?
A. It is right there; it would be the last car.

34 By Mr. Reick:

Q. But it is marked off, too, is it not?
A. No, sir.
Q. See if it is not circled and marked off from the others with a pencil, indicating that it was not taken out.

By Mr. Parry:

Q. Do you know what that circle indicates?
A. No.

By Mr. Reick:

Q. What does "MC" mean?
A. I think I have answered that.
Q. Answer it again.
A. Points in New York State.
Q. You did not say that a moment ago; you said points on the New York Central.
A. No.

Mr. Mackey: No, he said points outside of the State, and New York State.

Q. If a car was intended for shipment to a point on the New York Central Railroad in Pennsylvania, how would it be marked?
A. I do not know as the Pennsylvania Railroad enters into the New York Central.
Q. I did not say that. Listen to the question again. If a car left Locust Gap Colliery intended for a point on the New York Central Railroad within the State of Pennsylvania, by what letters in your code would it be marked?
A. Within the State of Pennsylvania?
Q. Yes, sir, on the New York Central Railroad.
A. I never had a shipment of that kind; I could not tell you.

Mr. Parry: The New York Central does not run into Pennsylvania; it is the Fall Brook and Beech Creek.

Q. Did you ever have a shipment for points on the New York Central in Pennsylvania?
A. No, sir; not that I can recall.
Q. And you are unable to tell us just how a car intended for shipment to a point on the New York Central Railroad within the State of Pennsylvania would be marked?

35 A. Any New York Central orders are marked "MC."

Q. Would that apply if it were to a point within the State of Pennsylvania?

A. That is what I would like a little information on. Does the New York Central Railroad enter the State of Pennsylvania?

Q. The question is, from your code, whether "MC" applies to the New York Central as a railroad, or whether it applies within or without the State. That is the question, and your attention is directed to that.

A. Out of the State?

Q. Out of the State.

A. Yes, sir.

Q. And you cannot tell us how a car intended for shipment on the New York Central Railroad within Pennsylvania would be marked, can you?

A. I never had any shipment.

By Mr. Parry:

Q. The New York Central's line in Pennsylvania is called the Beech Creek Railroad, is it not? That is the railroad that connects with the Reading at Newberry Junction, is it not?

Mr. Reick: The Fall Brook and Beech Creek, known as the New York Central, running right through to Clearfield.

Q. Have you a code word for the Beech Creek?

A. That "MA" order is Beech Creek.

Q. "MA" is the Beech Creek code word?

A. Yes, sir.

By Mr. Reick:

Q. "MA," and the New York Central is "MC"?

A. Yes, sir.

Q. What have you for the Fall Brook ?

A. I guess the Fall Brook, that "MA" order would cover the Fall Brook and Beech Creek.

Q. If a car were shipped from Locust Gap Colliery over the Philadelphia and Reading to Renovo or Jersey Shore, Pennsylvania, how would it be marked?

A. Shamokin scales.

36 Q. If a car were intended to go to North Tonawanda, New York, how would it leave your colliery?

A. I would bill to Shamokin scale.

Q. If it were to go to Burlington, Vermont, how would you bill it?

A. I would not bill it at all. The clerks in the Shamokin scales would bill it.

Q. How would you ship it?

A. I would ship to Shamokin scales. I never had anything like this; this is out of the ordinary.

Q. When the cars left your office or your colliery, you had no

knowledge where those cars were going, beyond Shamokin Scales or St. Clair scales, did you?

A. I know those cars were going out of the State.

Q. How?

A. On that "MC" order.

Q. By reason of this code that is intended for the employees of the railroad and the Coal and Iron Company?

A. Yes, sir.

Q. And that is the only way, is that right?

A. That I could not tell, either.

Q. That is the only way you had of knowing?

A. Yes.

By Mr. Mackey:

Q. Would it be necessary for you to know anything about the destination of a car of coal leaving your colliery?

A. I am not supposed to know. I simply ship it to the scales, and it is re-billed at the scales.

Q. Your order is, so many cars of coal to the scales?

A. Yes, sir.

Q. Do you put these tags on with various letterings when they leave your colliery—"MC" and "MA.?"

A. Yes, sir.

Q. Why do you do that? Why are you required to do that? Why don't you just send a certain number of cars up to the scales and let the re-billing occur there?

A. It has been customary ever since I have been on the job,
37 and so it is with all shippers. It may help the scale men out when they get these tickets; they know what line to ship over. We do not bill; we just ship to the scales, and the cars are weighed and re-ticketed and re-billed from there.

Q. This is done for the purpose of secrecy as against competition, is it not?

A. Not that I know of.

Mr. Parry: I do not think so.

A. Those here are posted up at the office, that "MC," and the different railroads. If I had my list here I could explain better.

Q. When you send these trains out, then you know and you mark certain of them for points outside of the State?

A. Yes, sir.

Q. You know that there is going to be practically a continuous journey of that car from your colliery to a point without the State?

A. Yes, sir.

Q. And the only interruption of that journey is to weigh them at the scales?

A. Yes, sir.

By Mr. Scott:

Q. And re-bill?

A. They make out the freight bills there.
Q. Freight bills, you say?
A. Yes, sir.

By Mr. Reick:

Q. Where do you get this code from?
A. I have already explained that?
Q. Where?
A. Mahanoy Plane scale.
Q. When you started in the employ of the Philadelphia and Reading Coal and Iron Company as a shipping clerk, from whom did you receive the code explaining the meaning of the various initials shown on these several tickets?
A. It is self-explanatory.
Q. That is not an answer to the question. (Question read.)
A. The code has already been there, by the shipper that was there before me.
38 Q. Then when you entered the service of this company, part of the instructions you received from your predecessor was the explanation of this code, is that correct?

Mr. Parry: Do you think it is relevant to go back fourteen years and ask him what he did fourteen years ago?

Mr. Reick: The relevancy in this: Here is a company maintaining a code secret between itself and its employees——

Mr. Parry: You put the secrecy in.

Mr. Reick: A code secret between these various companies, the Coal and Iron Company and the Railway Company and its employees, for some purpose. Surely we have a right to show that such a code is knowledge to these employees for their own purposes. The public should not be bound and could not be expected to be bound, having no knowledge of any such arrangement. We must go by what is patent on the face of the ticket.

Mr. Mackey: I think you have shown all that is necessary. I think that as far as this case is concerned, it resolves itself around the legal proposition whether or not this train crew taking these coal cars from the colliery to the scales and leaving them there, whether that constitutes one separate and distinct journey for that purpose and for that crew. If it is one continuous trip from the colliery to the point of destination outside of the State, you must recognize the fact that your man was engaged in interstate commerce.

Mr. Parry: I do not see any difficulty in this thing at all. I am willing to admit that this man was killed while they were taking certain cars out of a colliery; that those cars were then hauled to Locust Summit, where they were placed on tracks; that a short time thereafter, I do not know whether it was the same day or the next day, some of them were hauled to Shamokin scale and some of them were hauled to St. Clair scale; that when they got there, they were weighed and waybilled and shipped to the points shown on those car tickets.

Mr. Mackey: Now I think you have everything. Have you anything to offer?

39 Mr. Parry: Don't you think, in view of the fact that agreements and admissions have heretofore been made and filed in this case, and subsequently repudiated by the claimant, that a formal agreement of facts should be drawn up in writing, approved by the Compensation Board, and submitted?

Mr. Mackey: The stenographer has read to us the agreement of facts as stated by you and as agreed to by the other side, and there will be no getting away from that by either side. They are the facts. The facts are sufficiently clear to us.

Mr. Parry: I also want on the record here that those cars are not unloaded at Shamokin; they are simply run over the scale and way billed and go right out.

Mr. Mackey: We understand that.

Mr. Scott: Your statement implies that.

Mr. Parry: The tickets show the date they left the colliery, and the date they left the scale, I think in most cases the following day.

Mr. Reick: They will be left here, will they not?

Mr. Parry: You are going to offer them in evidence, are you not?

Mr. Reick: We propose to offer them; they were their property. We formally offer them in evidence and ask that they be marked.

(Tickets—Form 1262—Nos. 31, 37, 58, 59, 61, 65, 68, 70, 71, 72, 74, 75, and 77, marked respectively Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, 1/16/18, H. C. W. Ticket—Form 1285, No. 25, marked "Exhibit No. 14, 1/16/18, H. C. W.")

CHARLES A. CONSTANTINE, recalled by claimant:

By Mr. Reick:

Q. Your attention having been directed to form 1262, serial number 74, about which there was some doubt in your mind when on the stand a moment ago, as to whether or not that was a part

40 of your train, now your recollection having been refreshed, what do you say now about this car 74?

A. That car I got a ticket for, and when we got down it was condemned by the inspector, and that is where we made our cut; we pulled down ahead of the car and left it stand, because it was condemned.

Q. And in the cutting of that car is where this man met his death?

A. Yes sir.

By Mr. Parry:

Q. Then that particular car was a car in your train at the time Mr. Hancock got hurt?

A. It was being pulled down from the colliery, yes. We cut ahead of it, because we had no billing for it.

Mr. Parry: Then that can go in with the other tickets, I suppose.
Mr. Reick: Yes.

EDWARD M. STEWART, called by claimant, sworn:

Examined.

By Mr. Reick:

Q. What position do you occupy in the employ of the Philadelphia and Reading Railway Company?
A. Weighmaster and billing clerk.
Q. Where?
A. At Shamokin scales.
Q. Were you so employed on the 15th of March, 1916?
A. Yes, sir.
Q. You were subpœnaed to bring with you all records, books and papers which would show the shipment of certain cars, the numbers being given to you, from Shamokin scale to various points, and you produce those and swear that those are copies taken from your original record, from this book (indicating)?
A. Yes, sir.

Mr. Reick: In view of that testimony, while it is not the best evidence, for the purpose of convenience we ask permission to offer these in evidence, instead of the book.
Mr. Mackey: All right; offer them.
Mr. Reick: We formally offer them.
41 Mr. Parry: Put in by agreement.

(Copies of way bills offered, numbered 979, 758, 773, 748, 756, 760, 757, 767, 763, 8, 865, 785, and 6105, marked respectively Exhibits Nos. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, 1/16/18, H. C. W.)

EDWARD M. STEWART, recalled by defendant:

Examined.

By Mr. Parry:

Q. You are the weighmaster at Shamokin, are you not?
A. Yes, sir.
Q. What was done with the coal covered by this way bill? Was it unloaded at Shamokin, or what happened to it?
A. No, it went forward as consigned, as per those billings.
Q. What do you do with it there?
A. What do you mean?
Q. At the scale. What do you do with it?
A. The coal is forwarded the way it is billed or shipped.
Q. Weigh it and bill it?
A. Weigh it and bill it.

Q. I suppose the weighing is done for the purpose of figuring the freight charges?

A. Freight charges and rate per ton.

Q. I see here way bill No. 979, covering car New York Central, 79749 from Shamokin scale to Rochester, New York; rate $1.90 per ton. That is correct, is it?

A. Yes sir.

Q. Does that charge cover the haul from the colliery to Rochester, New York, or the haul from Shamokin scales to Rochester, New York?

A. To the best of my knowledge that covers it from the colliery right through to the destination.

Q. Do you charge any separate or additional sum for hauling the car from Locust Gap Colliery to Shamokin scale, other than that figure, at that rate?

A. No, sir; not any.

42 Q. Who pays that?

A. The party getting the coal.

Q. The consignee?

A. Yes.

Q. They pay for the whole haul, do they?

A. Yes, sir; that is a collect shipment. This one in particular is a prepaid shipment.

Q. Who pays it when it is prepaid?

A. The party getting the coal pays for it eventually.

Q. You mean the Coal and Iron Company, the shipper, advances the freight charges?

A. They advance the freight charges.

Q. And get it out of the consignee?

A. It is added to the price of the coal.

Q. There is not any difference in the freight charge, is there?

A. No, there is no difference whatsoever.

Q. Thaf is true of all those bills, is it not?

A. Of all of them.

By Mr. Reick:

Q. Glance through these tickets and see whether the majority of them do not indicate that the freight has been prepaid.

(Witness complies.)

Q. Out of ten, two were collect and eight prepaid?

A. Yes.

(Testimony closed.)

I hereby certify that the proceedings, evidence and findings are contained fully and accurately in the notes taken by me upon the trial of the above case, and that this copy is a correct transcript of the same.

H. C. WILSON,
Stenographer.

43 *VI. Opinion of the Workmen's Compensation Board.*

MACKEY, *Chairman:*

John R. Hancock, the husband of the petitioner, was killed on March 15th, 1916, while in the course of his employment for the defendant, The Philadelphia and Reading Railway Company, under such circumstances that the claimant would clearly be entitled to an award for compensation for herself and her children as dependents of the deceased, were it not for the defense as set up in this case, namely, that both the deceased workman and the defendant, at the time of the accident, were engaged in interstate commerce and thereby a State compensation law has no application, but on the contrary the rights of the respective parties must be determined under the Employers' Liability Act of 1908.

The testimony reveals the fact that the deceased was a trainman in the employ of the Philadelphia and Reading Railway Company. It seems that the duties of this workman never took him outside of the State of Pennsylvania. He, together with the other members of the train crew with whom he worked, were solely occupied in moving cars of coal from the mines to various shipping points of the defendant within the State of Pennsylvania. On the day of the accident he was assisting his crew in moving a train of coal cars from Locust Gap Colliery, a mine owned and operated by the Philadelphia and Reading Coal and Iron Company, to Locust Summit. These points are about two miles apart and both are within the State of Pennsylvania.

A reference to the testimony on page 9 will disclose what disposition was made of these cars at this point. Charles A. Constantine, the conductor of the train, testified in answer to the questions:

Q. When you got your train to Locust Summit Yard, just tell us what you did with the train?

A. We back it into the yard and we go in to the yardmaster and tell him what we have, so many cars for different scales, and ask him where to put them, and he instructs us then on what tracks he wants them and we switch them on the tracks that he instructs us.

These cars of coal thus placed in the different switches by the crew of which the deceased was one were subsequently sent
44 either to St. Clair Scales or Shamokin Scales, the former being about 25 miles from Locust Summit yard and the latter about 10 miles from the same point, all being within the State of Pennsylvania. The deceased's connection with these cars was entirely terminated at Locust Summit. These coal cars were shipped by the Philadelphia and Reading Coal and Iron Company and consigned to itself at Shamokin Scales. The defendant, as a transportation company, had undertaken the movement of these cars in consequence of a telegraphic order from Mahanoy Plane Scales.

The shipping orders that reached the hands of the conductor of

the train upon which the deceased was working contained no suggestion of a shipment beyond the State of Pennsylvania in direct words, but there were certain cars of coal in this train that had been ordered in the usual method as above described but upon the cards or memoranda that reached the conductor there were certain letters of a private code, indicating that a car to which the card was attached was intended eventually to be shipped outside of the State. The defendant urges that because of this private marking by these code letters that such a car was then impressed with the character of interstate commerce and that the deceased workman became engaged in interstate commerce as soon as this car was attached to the train upon which he worked.

In order that the position of the defendant may be clearly stated let us refer to the exhibit which is the subject of the testimony on page 12. This fairly indicates the position of the defendant and a study of this shipping ticket will be conclusive on all the others. Form No. 1262, Serial Number 68, bears the date of March 15th, 1916, the day upon which the deceased was killed. In consequence of the order of procedure established between the coal company and the railroad company, as hereinbefore set out, this ticket was placed in the hands of the conductor at the mines, and indicated to him that this car Number 730455, loaded with stove coal, was to be moved by the Philadelphia and Reading
45 Railway Company from Locust Gap Colliery to the Shamokin Scales and that his duty together with that of the deceased was to transport it as far as Locust Summit. His train, as usual, was to be broken up in the yard at Locust Summit and the cars placed upon tracks convenient for further transportation to either St. Clair or Shamokin Scales.

All then that was upon this ticket was the size of the coal, the number of the car, its initials, the capacity of the car and the number of the order. It will be noticed that under the number of the order are two letters "MC." The conductor on page 11 testified as follows:

Q. Did you have, as evidenced by the shipping instructions or tickets, in your train that day, that you hauled from Locust Gap Colliery to Locust Summit, any cars consigned to any point beyond the State of Pennsylvania?

A. No, sir.

On cross-examination on page 19 he further testified as follows:

Q. Then you know the course of business up there thoroughly, I suppose.

A. Yes, sir.

Q. This is the way this thing is always done, is it not, the colliery clerk gives you tickets like this and you take the cars and haul them along toward the scale, and when you get to Locust Summit yard, some other engine hauls them to Shamokin Scales, is that right?

A. Yes, sir; our duty is to haul them from the colliery to Locust Summit yard, and I do, whatever colliery we are workng on.

On page 21 in answer to the question:

Q. Do you know what "MC" means?

A. I know from my experience as yardmaster that "MC" means to furnish cars for a road on the New York Central Railroad.

46 This witness had been in the Company's service for many years in the capacity of a yardmaster and subsequently as conductor on trains in the colliery division (see page 19).

The part played by these letters in the final disposition of car Number 730455 is shown by the testimony. These letters "MC" were placed upon this ticket in consequence of the orders telegraphed from Mahanoy Plane to the shipping clerk of the coal company at the mines and indicated that it was the intention of the shipper to eventually consign this particular car to a point without the State. This car was cut out of the train at Locust Summit and placed upon a switch in the yard where cars were assembled to be forwarded to Shamokin Scales

It must be remembered that this shipment was from the Philadelphia and Reading Coal and Iron Company to itself. When the car reached its destination at the Shamokin Scales it was inspected, weighed and rebilled on the next day. Under the testimony there was no writing on the ticket below the double line. On the day after the deceased had been killed this car was billed to Ebner & Wahling, Webster, N. Y., via New York Central Railroad.

The course that this car took is typical of a number of others in the train. This one, however, is sufficient to characterize the whole train together with the work of the deceased as interstate business if it be determined that the interstate trip began at the mine. The claimant contends that at the time of the injury, the train was under an intrastate movement. It is urged in her behalf that this train from Locust Gap Colliery to Locust Summit yards where it was classified and thence shipped to Shamokin Scales was simply a train movement of convenience on the part of the defendant by arrangement either secret or otherwise between the railroad company and the shipping company whereby the output of the various collieries, operated by the shipping company and served by the railroad company, was removed and collected for shipment at various points, in order that the collieries might not be delayed and that room for empty cars at the collieries might be obtained. The claimant

47 further contends that the first movement of any of the cars of this train of an interstate character began on the 16th of March, 1916, at the Shamokin Scales, the day after the accident.

The claimant also maintains that, inasmuch as the defense of interstate commerce carries with it the burden of proof which must be met by clear and indubitable testimony on the part of the defendant, that there is no evidence showing any movement of these cars beyond the Shamokin Scales, notwithstanding the fact that there was presented in evidence these tickets subsequently marked for destination

outside of the State and also bills of lading corresponding to them.

The claimant contends that this is only self-serving evidence on the part of the defendant and that the best testimony has not been produced to show that these cars eventually reached points without the State of Pennsylvania. We are not disposed to consider the evidence as narrowly nor as technically as this. It is our thought, however, that the interstate journey of these cars began at the Shamokin Scales, after the coal had been weighed, the cars inspected and billed to their final destination. There, for the first time, was disclosed the names of the consignees and place of destination. There too, were issued the way bills.

It is our thought that the aforesaid shipping clerk, having in his possession orders from his immediate superior for shipments of coal to various points, advised the company's representatives at the mines to assemble so many "MC" cars, so many "HA" cars and a number of others according to a private code. This did not designate any particular car but was simply an indication to the shipping clerk to place the private code or mark upon a sufficient number of cars for the purposes of the shipper. They were to be assembled first at Locust Summit and then forwarded to the Shamokin Scales, where the shipper could, if it saw fit, exercise its proprietorship over that coal by sending it into another State or into any part of Pennsylvania or by using it as it chose. No exercise of ownership over
48 that coal could be made by its final consignees until it had been billed at Shamokin Scales. The shipment of that coal from the mine to the Shamokin Scales was at the pleasure and under the method of business of the shipper and was no different in character from any other movement of its own coal on its own property. It has been held that:

"The fact that the owner of merchandise which is offered to a carrier for transportation from one point to another in the same State intends to have it further transported by a second carrier into another State does not make such first transportation interstate commerce even though such first carrier may be informed of the ultimate destination of the merchandise."

Augusta Brokerage Company vs. R. R. Company, 62 S. E. 996.

There is no evidence that the telegraphic order that was sent from Mahanoy Plane to the shipping clerk at the mines was in consequence of any actual sale. We regard the Shamokin and the St. Clair yards as the assembling points for coal. These points had been determined upon for the convenient prosecution of the business. It has been held that "the intention of the shipper cannot fix the place of destination but that must clearly appear from the contract with the shipper and from the surrounding circumstances."

Chapman & Dewey Land Company vs. R. R. Company, 133 S. W. 1119.

It has also been held "When the interstate commerce begins is determined not by the character of the commodity, nor by the in-

tention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State." U. S. vs. Boyer, 85 Fed. 435.

In State vs. The Mo. Pacific Railway Company, 115 N. W. 614, it has been well said:

49 "There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed by the national law of commercial regulations, and that moment seems to us to be a legitimate one in which they commence their final movement for transportation from the State of origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for the particular region, whether on a river or on a line of railroad, such products are not yet exports nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started in their ultimate passage to that State."

We accordingly assemble the following facts and inferences as being, in our judgment, the ones material to this issue. Any other facts found by us in the foregoing discussion are to be considered however as findings of facts for the purpose of review.

1. John R. Hancock, the husband of the claimant Margaret L. Hancock, was killed on March 15th, 1916, within the State of Pennsylvania, while in the course of his employment for the Philadelphia and Reading Railway Company.

2. That both the deceased, John R. Hancock, and the Philadelphia and Reading Railway Company had accepted Article 3 of the Pennsylvania Workmen's Compensation Act of 1915 and were both under the said Article 3 at the time of the accident which caused the death of the deceased.

3. Said deceased was engaged in the work of a trainman for the defendant company in the movement of certain cars of coal from Locust Gap Colliery to Locust Summit. Said point being within the State of Pennsylvania.

50 4. The work of the deceased for the defendant never took him outside of the State of Pennsylvania and upon the date of his death there were no cars in the train upon which he was working which were consigned to any points outside of the limits of the State of Pennsylvania, although on certain cars the cards were marked "MC" as hereinbefore described.

5. The cars of coal in the train upon which the deceased was working were being transported from the mines to different yards for the convenience of the shipper. The subsequent shipments of any of the cars in the train upon which the deceased was working to

points without the State were made after the death of the deceased and after the train crew with which the deceased worked had severed its connection with the said cars.

6. The shipments of any of the cars which were in the train upon which the deceased was working on the day of his accident which caused his death, to points without the State began and was first undertaken on March 16th, 1916, on the day when the cars were billed and marked for shipment to points outside of the State.

7. The code letters such as "MC" and "HA" as described in the testimony were used by the employees of the Philadelphia and Reading Coal and Iron Company for their own convenience and for the purpose of expeditiously assembling certain cars at certain points without any necessary bearing upon the ultimate destination of the said cars, although clearly it was the intention of the shipper that such cars were to eventually reach points outside of the State.

8. The deceased received from the defendant wages of $3.00 per day and worked six days a week, and had been thus employed for a period longer than six months immediately before his death,
51 and that further we find that the deceased was engaged in continuous employment and his average weekly wage was $18.00.

9. The dependents of the deceased are:
Margaret L. Hancock, widow.
Leo T. Hancock, son, born June 30th, 1905.
Herbert Hancock, son, born November 12th, 1906.
Violet Hancock, daughter, born March 13th, 1909.
Edith Hancock, daughter, born September 12th, 1910.
John Hancock, son, born September 10th, 1913.
Margaretta Hancock, daughter, born February 6th, 1916.

10. The funeral expenses were $97.00.

Conclusions of Law.

Under the Pennsylvania Workmen's Compensation Act of 1915 the deceased was an employee within the meaning of Article III, Section 301, and his dependents are entitled to compensation according to the provisions of the said Act. Interstate commerce is not a matter of intention, but of fact; and having found that the interstate shipment began at Shamokin Scales on the day after the deceased was killed, neither the deceased nor the defendant was engaged in interstate commerce at the time of the accident.

It is hereby ordered that the defendant, The Philadelphia and Reading Railway Company, pay the following award as herein specified:

To the widow, Margaret L. Hancock, 60% of $18.00 or $10.80 per week for 300 weeks from March 15th, 1916, to December 15th, 1921 ..... $3,240.00

It appearing that the child Leo. T. Hancock will arrive at the age of 16 before the expiration of the period of 300 weeks there need be no separate award for him.

To the guardian of Herbert, Violet, Edith, John and Margaretta Hancock there is awarded 50% or
52 $9.00 per week for a period of 46 weeks and 4 days from Dcember 15th, 1921, to November 11th, 1922 ..... 419.14

To the guardian of Violet, Edith, John and Margaretta Hancock, 45%, or $8.10 for 121 weeks and 4 days from November 11th, 1922, to March 12th, 1925..... 985.50

To the guardian of Edith, John and Margaretta Hancock 35% or $6.30 for 77 weeks and 5 days from March 12th, 1925, to September 11th, 1926..... 490.35

To the guardian of John and Margaretta Hancock 25% or $4.50 per week for 156 weeks from September 11th, 1926, to September 9th, 1929..... 702.00

To the guardian of Margaretta Hancock 15% or $2.70 per week for 125 weeks and 2 days from September 9th, 1929, to February 5th, 1932..... 338.40

Making a total of $6175.39

together with $97.00 burial expenses and the cost of these proceedings.

Feb. 14, 1918.

HARRY A. MACKEY,
Chairman.
JOHN A. SCOTT,
Commissioner.
JAMES W. LEECH,
Commissioner.

53 *Appeal and Exceptions.*

[Seal, Workmen's Compensation Board.]

Received Feb. 26, 1918.

Referred to ——.

In the Court of Common Pleas of Schuylkill County, of —— Term, 191–.

No. —.

Bureau of Workmen's Compensation. Department of Labor and Industry. Claim Petition No. 740.

MARGARET L. HANCOCK, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Philadelphia and Reading Railway Company, Insurance Carrier.

Philadelphia and Reading Railway Company, Appellant, appeals from the decision of the Workmen's Compensation Board made February 14th, 1918, on the claim above mentioned.

PHILADELPHIA AND READING
RAILWAY COMPANY,
By GEO. ZIEGLER,
Secretary.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

George Ziegler on oath says that he is Secretary of Appellant, and that this appeal is not taken for the purpose of delay, but because the Appellant believes that injustice has been done by the decision appealed from.

GEO. ZIEGLER.

Sworn to and subscribed before me this 23rd day of February, A. D. 1918.

J. V. HARE,
[SEAL] *Notary Public.*

Commission expires March 1, 1919.

54 *IX. Opinion of the Court of Common Pleas.*

BECHTEL, *P. J.*:

The appeal in this case involves but one question and that is whether or not the deceased was engaged in the moving of cars in interstate commerce at the time he was killed. [It may now be regarded as settled in Pennsylvania that the Courts have nothing to do with the findings of fact made by the Referee and affirmed by the Compensation Board, as these findings are to be regarded as final.] In this case the following findings of fact appear:

Findings of Fact.

3. Said deceased was engaged in the work of a trainman for the defendant company in the movement of certain cars of coal from Locust Gap Colliery to Locust Summit. Said points being within the State of Pennsylvania.

4. The work of the deceased for the defendant never took him outside of the State of Pennsylvania and upon the date of his death there were no cars in the train upon which he was working which were consigned to any points outside of the limits of the State of Pennsylvania, although on certain cars the cards were marked "MC" as hereinbefore described.

5. The cars of coal in the train upon which the deceased was working were being transported from the mines to different yards for the convenience of the shipper. The subsequent shipments of any of the cars in the train upon which the deceased was working to points without the State were made after the death of the deceased and after the train crew with which the deceased worked had severed its connection with the said cars.

6. The shipments of any of the cars which were in the train upon which the deceased was working on the day of his accident which caused his death, to points without the State began and was first undertaken on March 16th, 1918, on the day when the cars were billed and marked for shipment to points outside of the State.

7. The code letters such as "MC" and "HA" as described in the testimony were used by the employes of the Philadelphia
55 and Reading Coal and Iron Company for their own convenience and for the purpose of expeditiously assembling certain cars at certain points without any necessary bearing upon the ultimate destination of the said cars, although clearly it was the intention of the shipper that such cars were to eventually reach points outside of the State.

It will be seen that these findings of fact dispose of the question before us, for if they be correct, it is plain that the deceased was not engaged in the movement of cars in interstate commerce at the

time he was killed. We have examined the record as transmitted to us from the Compensation Board and feel that there is ample evidence to sustain these findings of fact and that for the reasons given in an exhaustive and well-argued opinion by Mr. Chairman Mackey, the judgment of the Compensation Board should be affirmed.

And now, April 22d, 1918, the judgment of the Compensation Board is hereby affirmed and the appeal dismissed at the costs of the appellant.

By THE COURT.

56 *X. Assignments of Error.*

1. The Court below erred in dismissing defendant's first exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"1. The Compensation Board erred in reaching the legal conclusion that the claimant was entitled to compensation under the Workmen's Compensation Act of 1915."

2. The Court below erred in dismissing defendant's second exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time decedent was injured."

3. The Court below erred in dismissing defendant's ninth exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"9. The Compensation Board erred in holding that there were no cars in the train upon which decedent was working consigned to points outside the State of Pennsylvania." (Opinion of Compensation Board.)

4. The Court below erred in dismissing defendant's tenth exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"10. The Compensation Board erred in holding the shipment of the said cars began on March 16th, 1916."

5. The Court below erred in dismissing defendant's eleventh exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"11. The Compensation Board erred in holding that the code letters 'M. C.' etc., had no bearing on the ultimate destination of the cars."

6. The Court below erred in dismissing defendant's twelfth exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"12. The Compensation Board erred in calculating the amount of the award, the said award being in violation of Article III,
57 Section 309, of the Workmen's Compensation Act of 1915."

7. The Court below erred in dismissing defendant's fifteenth exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"15. The award of the Compensation Board was in conflict with the provisions of the Act of Congress of April 22d, 1908, and supplements thereto, known as the Federal Employers' Liability Act, and in violation of Article I, Section 8 of the Constitution of the United States."

8. The Court below erred in dismissing defendant's sixteenth exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

"16. The award of the Compensation Board was in violation of the XIV Amendment to the Constitution of the United States in that it deprives this defendant of its property without due process of law."

9. The Court below erred in holding that—

"It may be regarded as settled in Pennsylvania that the Courts have nothing to do with the findings of fact made by the Referee and affirmed by the Compensation Board, as these findings are to be regarded as final."

10. The Court below erred in that it did not remand the case to the Workmen's Compensation Board for specific answers to defendant's requests for findings of fact.

GEORGE GOWEN PARRY,
JOHN F. WHALEN,
Attorneys for Philadelphia and Reading Railway Company, Appellant.

Endorsement. No. 64. In the Supreme Court of Pennsylvania. January Term, 1919. Margaret L. Hancock vs. Philadelphia & Reading Railway Company. Assignments of Error. Filed in Supreme Court Feb. 6, 1919, Philadelphia. George Gowen Parry Attorney at Law, 609 Franklin Building, Philadelphia.

58 In the Supreme Court of Pennsylvania, Eastern District, January Term, 1919.

No. 64.

MARGARET L. HANCOCK

vs.

PHILADELPHIA AND READING RAILWAY COMPANY.

To the Honorable the Justices of the Supreme Court:

The petition of the Philadelphia and Reading Railway Company, defendant herein, respectfully represents:

That the above case is an appeal by the defendant from the judgment of the Court of Common Pleas of Schuylkill County, dismissing an appeal from the decision of the Workmen's Compensation Board.

That your petitioner is advised that the judgment of the Court of Common Pleas of Schuylkill County in the above case is based upon an award by the Workmen's Compensation Board which is predicated upon findings of fact which have no evidence to sustain them.

That upon the entire record, including the testimony, it appears that the judgment of the Court of Common Pleas of Schuylkill County deprives your petitioner of the right given to it by the XIV Amendment to the Federal Constitution.

Your petitioner is further advised that upon this appeal from the judgment of the Court of Common Pleas of Schuylkill County the evidence, taken before the Compensation Board and a part of
59 the record of the proceedings before that Board, will not be considered by your Honorable Court nor will this Court regard such evidence as properly before it unless the same is brought before your Honorable Court by special allowance.

That your petitioner cannot properly present to your Honorable Court the Federal questions involved in this appeal unless it is permitted to submit the notes of testimony for the Court's review.

It, therefore, attaches hereto the transcript of the notes of testimony as certified to by the Court of Common Pleas of Schuylkill County, and respectfully prays leave to print them as part of the record in its paper book, and to argue the questions arising thereon at the argument to be had upon the pending appeal.

And your petitioner will ever pray, &c.

PHILADELPHIA AND READING RAILWAY COMPANY,
By GEORGE ZEIGLER, *Secretary.*

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

George Zeigler, being duly sworn according to law, deposes and says that he is Secretary of Philadelphia and Reading Railway

Company, the petitioner herein, and that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

Sworn to and subscribed before me this first day of February, A. D. 1919.

J. V. HARE,
Notary Public.

Commission expires March 1, 1919.

I hereby certify that a copy of the foregoing petition has been served upon counsel of record for the plaintiff above named.

GEORGE GOWEN PARRY,
Of Counsel for Petitioner.

60 TESTIMONY.

Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Workmen's Compensation.

A-100. C.P.-740.

MARGARET L. HANCOCK, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Hearing held at the Court House, Pottsville, Pennsylvania, on Wednesday, January 16th, 1918, at 10.00 A. M. before Messrs. Mackey and Scott, members of the Board.

Claimant represented by L. L. Frank, Esq., Gordon, Pennsylvania, and R. A. Reick, Esq., Frackville, Pennsylvania.

Defendant represented by George Gowen Parry, Esq., 133 South Twelfth Street, Philadelphia.

Testimony for Claimant.

Examination.

MARGARET L. HANCOCK: called and sworn:

By Mr. Mackey:

Q. What is your name?
A. Margaret Hancock.
Q. Where do you live?
A. Gordon.

By Mr. Reick:

Q. What was your husband's name?
A. John R. Hancock.

Q. Where is your husband?
A. He is dead.
Q. When did he meet his death?
A. March 15th, 1916.
Q. At the time of your husband's death, by whom was he employed?
61 A. The Reading Company.
Q. Philadelphia and Reading Railway Company?
A. Yes, sir.
Q. What was your husband's position; what did he do?
A. Brakeman.
Q. On the railroad?
A. On the railroad.
Q. And what was the location of his employment; where was he employed?
A. Gordon.
Q. Did your husband work on the fifteenth day of March, 1916?
A. Yes, sir.
Q. When your husband left the house in the morning to go to his work, tell us when you next saw your husband, or your husband's body?
A. I did not see it until 5 o'clock in the evening.
Q. Was he living or dead?
A. No, sir; he was dead; he was brought home in the ice box.
Q. When were you married?
A. February, 1905.
Q. And at the time of your husband's death you and he were living together as man and wife?
A. Yes, sir.
Q. Do you have any children?
A. Six.
Q. Starting with the oldest child, tell us the name and age of your oldest child.
A. Leo Hancock, born June 30th, 1905.
Q. The next one?
A. Herbert Hancock, born November 12th, 1906; Violet Hancock, born March 13th, 1909; Edith Hancock, born September 17th, 1910; John Hancock, born September 10th, 1913; Margaret Hancock, born February 10th, 1916.

By Mr. Parry:

Q. February 10th, or February 6th?
A. Tenth.

62 Mr. Parry: The petition says the 6th.

By Mr. Reick:

Q. Which is correct, the 10th or 6th?
A. The 10th is correct.
Q. On the 15th of March, 1916, these children lived with you in the home at Gordon?

A. Yes, sir.
Q. Tell us whether or not they were supported and maintained by your husband?
A. Yes, sir.
Q. When was your husband buried?
A. On the 18th of March, 1916.
Q. Where?
A. Fountain Spring.
Q. Buried from your family home?
A. Yes, sir.
Q. Where do you now reside?
A. In Gordon.
Q. Are these children being maintained and supported by you?
A. Yes, sir.
Q. What was the expense of the funeral of your husband?
A. Ninety-seven dollars.
Q. Do you know how your husband met his death?
A. He was squeezed between two cars,

Mr. Parry: You were not there, were you?

Q. You know that from what you were told; of your own knowledge you do not know?
A. No.

Mr. Parry: Objected to.

Q. What were your husband's wages; what was your husband earning per week at the time he met his death?
A. He worked six days a week and earned three dollars a day.
Q. That would approximate $18 a week?
A. Yes, sir.
63 Q. State whether or not some weeks that might have been more and others less.
A. Yes, sir.
Q. But it approximated $18 a week?
A. Yes, sir.
Q. How was he paid—monthly or semi-monthly or weekly?
A. Monthly.
Q. I mean, was your husband paid once a month or every two weeks?
A. Every two weeks.

By Mr. Mackey:

Q. How long had your husband been working for this company?
A. About 13 or 14 years.
Q. Had he been working for the company continuously for six months previous to his death.
A. Yes.

By Mr. Reick:

Q. Have you received any money from the Philadelphia and Reading Railway Company since your husband's death?
A. No, sir.
Q. I believe you did receive such wages as were due him at the time of his death, did you not?
A. Yes, sir.
Q. The wages that he had earned up to the time of his death you received from them?
A. Yes, sir.
Q. And that is all the money you received?
A. Yes, sir,
Q. Has the $97 or any part of the $97 been paid to you?
A. No, sir.

Mr. Reick: I refer to the $97 for the funeral expenses.

Cross-examination.

By Mr. Parry:

Q. Your husband was paid by the hour, was he not?
64 A. Yes, sir.
Q. How much an hour?
A. Thirty cents.
Q. How long was his working day?
A. Ten hours.
Q. If he worked more than 10 hours, did he get overtime?
A. Yes, sir.
Q. Did he earn overtime sometimes?
A. Yes, sir.
Q. He was a member of the Railway Relief Association, was he not?
A. Yes, sir.
Q. Did you not get a payment after his death on that account?
A. Yes, sir.
Q. How much was that?
A. Six hundred dollars.

Redirect examination.

By Mr. Reick:

Q. This $600 that you say you received from the Relief Association, that is an insurance association maintained in connection with the railway company, is it not?
A. Yes, sir.
Q. And for that a certain premium was taken off; either semi-monthly or monthly, from your husband's wages?
A. Yes, sir.
Q. What rate was taken off per month for that $600, if you know?
A. A dollar and a half.

Q. A dollar and a half was taken off monthly as his contribution toward membership in that Relief Association?
A. Yes, sir.

CHARLES A. CONSTANTINE, called and sworn:

Examination.

By Mr. Reick:

Q. Where do you live?
65 A. Gordon.
Q. Where did you live on the 15th of March, 1916?
A. Gordon.
Q. By whom were you employed?
A. Philadelphia and Reading Railway Company.
Q. In what capacity?
A. Conductor.
Q. By whom and in what capacity were you employed on the fifteenth day of March, 1916?
A. Employed by the Philadelphia and Reading Railway Company as conductor.
Q. You may tell us whether or not the duties incident to your position placed you in charge of the movement of coal trains.
A. Yes, sir.
Q. Do you recall whether or not, on the fifteenth day of March, 1916, John R. Hancock was a member of your crew?
A. Yes.
Q. In what capacity?
A. Trainman.
Q. And the location of your crew was where? I mean, from where did your crew move out?
A. We worked between Gordon and Locust Gap Colliery.
Q. The point I have in mind is, that your central starting point was Gordon, was it?
A. Gordon.
Q. Have you any recollection of an injury that resulted in the death of Mr. Hancock on the 15th of March, 1916?
A. Yes, sir; he was killed on my train.
Q. Where?
A. Locust Gap Colliery.
Q. On the line of the Philadelphia and Reading Railway Company?
A. Yes, sir.
Q. And while he was in the employ of said company?
A. Yes, sir.
Q. State whether or not his death occurred while he was in the prosecution of the duties of his employment.
66 A. It did; yes, sir.

Mr Parry: That is a conclusion, I think.

Mr. Mackey: Ask him what he was doing.

Q. What was he doing at the time of his death?

A. He was supposed to be cutting the cars. He pulled a draft of cars out from the colliery, and he was on the rear car to cut loose when we stopped.

Q. Go on and tell us all the facts you have relative to his death.

A. When we stopped our train for the cut, we felt a bump on the rear end, and one of the boys said, "There is something wrong back there," and I got out; I was on the left hand side of the engine, looking for signals on my side; it was in a curve, and you could not see the signals properly. So I got out and went back, and when I did, the front brakeman came running and said Hancock had been killed, caught between the cars.

Q. Did you go back and see the body?

A. Yes, sir.

Q. What was Mr. Hancock's condition when you got back?

A. It appeared as though there was a little life there yet, but he was entirely unconscious.

Q. How long after you got back there was it before life was extinct?

A. We carried the body into the storehouse and sent for Dr. Parker. I suppose it may have been 20 or 30 minutes till he came there, and he pronounced the man dead when he came.

Q. This train you were hauling that day, where did you get that train?

A. Locust Gap Colliery.

Q. And where did you haul the train to and finally surrender or deliver up the train?

A. Locust Summit yard.

Q. How many cars were in the train?

A. I think there were nine or ten; I could not just say the exact number; it is too long to remember; I have no record.

67 Q. We will get to that a little later on. This train that you picked up you got at Locust Gap Colliery and you hauled it to Locust Summit, you say?

A. Yes, sir.

Q. What is the distance from Locust Gap Colliery to Locust Summit?

A. Two miles.

Q. In what direction?

A. In each direction; it is two miles from the colliery to the Summit.

Q. Both Locust Gap Colliery and Locust Summit are in Northumberland County, this State?

A. Yes, sir.

Q. When you got your train to Locust Summit yard, just tell us what you did with that train.

A. We back it into the yard and we go in to the yardmaster and tell him what we have, so many cars for different scales, and ask him where to put them, and he instructs us then on what

tracks he wants them, and we switch them on the tracks that he instructs us.

Q. As I understand you, certain of these cars you switched on one track and certain of the cars you switched on another track?

A. Yes, sir.

Q. At the direction of the yardmaster?

A. Yes, sir.

Q. From whom you were to take such orders?

A. Yes, sir.

Q. You did not leave it stand, then, on the main road, as a solid train?

A. No sir.

Q. But your train was broken up and switched on different tracks, according to orders that you received from the yardmaster?

A. Yes, sir.

Q. At the time you took these cars from Locust Gap Colliery, tell us how or in what manner information was given to you as to the location or destination of these cars.

68 A. We get a ticket from the shipping clerk at the colliery, stating where the cars are to go to. Part of the train was shipped from Locust Gap Colliery to Shamokin scale, and part from Locust Gap Colliery to St. Clair scale.

Q. I show you a blank ticket, for the purpose of identification, numbered Form 1285. Now, not speaking of any writing that is on it, but exclusively as to the form, is that the form of ticket you received at Locust Gap Colliery?

A. That is the form of the car shipped to St. Clair scale.

Mr. Parry: Were not these cars taken to Shamokin scale?

Mr. Reick: Some to St. Clair and some to Shamokin.

Mr. Parry: I thought he said they only went to Locust Gap.

Mr. Reick: He took them to Locust Summit. Some were consigned to Shamokin and some to St. Clair scale.

Q. When you received your tickets for this train at Locust Gap Colliery, was there more than one form or character of ticket given you?

A. Two characters of ticket.

Q. Without regard to any inscription or writing on it, but solely as to form, were you given any tickets of that character (indicating)?

A. Yes, something similar to that, about similar to that.

Q. And where were the cars covered by that form of ticket——

Mr. Parry: Have you not subpœnaed these records?

Mr. Reick: Yes, but I have not subpœnaed them from this witness, because he does not have them in his possession. The testimony was that he parted with them.

Mr. Parry: Cannot he identify the ones he had?

Mr. Reick: We do not have the originals. They are exclusively within your control.

Mr. Parry: You subpœnaed them. We have them here.

Q. You say you had two forms of ticket?
A. Yes, sir.
Q. The one form, known as form 1285, was for cars consigned to St. Clair scale?
69 A. St. Clair scale.
Q. And the other, known as form 1262, consigned to Shamokin scale?
A. Yes, sir.
Q. When you surrendered your train as you have indicated, by shifting some cars on one track and some on another at Locust Summit, what did you do with the tickets?
A. Gave them to the yardmaster.
Q. Was he the proper person to receive these tickets?
A. Yes, sir.
Q. Did you have, as evidenced by the shipping instructions or tickets, in your train that day, that you hauled from Locust Gap Colliery to Locust Summit, any cars consigned to any point beyond the State of Pennsylvania?
A. No, sir.
Q. What is at Locust Summit? You say you took the cars to Locust Summit and put some cars on one track and some on another track. What is there at Locust Summit that causes you to do that?
A. Locust Summit is a yard where they receive the cars from the colliery.
Q. How far is Shamokin scales from Locust Summit, to your best judgment?
A. It is between 11 and 12 miles.
Q. And that is in Northumberland County, this State?
A. Yes sir.
Q. How far distant from Locust Summit is St. Clair scales?
A. That I do not know; I guess about between 25 and 30 miles, by way of Mahanoy Plane.
Q. And St. Clair scales is where?
A. In Schuylkill County.
Q. This State. If you had the original tickets that you received at Locust Gap Colliery that day, would you be able to identify them?
A. I would not be able to identify the numbers of the cars, because I would not know them. I would be able to identify that class of ticket.

Mr. Reick: Will you let us have the original tickets, please?

(Papers produced by Mr. Parry.)

70 Q. (Witness shown ticket on form No. 1262, bearing the serial number 68, purporting to be a Western gondola car shipped by the Philadelphia and Reading Coal and Iron Company per the Philadelphia and Reading Railway Company, under date of March 15th, 1916.) Do you recognize that as one of the tickets that were handed to you at Locust Gap Colliery that day?

A. Yes, sir; it is similar to the ticket that was handed to me, excepting there was no writing underneath this space.

Q. Down to the heavy dotted line immediately above the words, "Do not write in this space," do we understand you to say when the ticket was furnished to you, that space was blank?

A. That space was blank.

Mr. Reick: And that reads as follows: "From Locust Gap Colliery to Shamokin Scales. Car number, 73045. Initial, L. S. M. S. Order number, 1649," and under the figures 1649 the initials "MC." Below the space and in the space testified to by the witness as being blank at the time the ticket was furnished to him appears the following: In the lower left hand corner, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916." The Commission will observe that is one day subsequent to the date of the movement of the train and the original date on the ticket. Underneath that, "Philad'a & Reading Ry. Co." In the center, "2728A," and in the upper right-hand corner of the blank space, the same numbers, "2728A" and the words, "Ebner & Whaling, Webster, N. Y." Underneath that the letters "NYC" and "Freight prepaid. O. K. 38.15."

Q. Witness shown same form, serial number 71, same character of ticket, same date. Do you identify that as one of the tickets that you remember were handed you that day?

A. Similar to the ones, that is.

Mr. Parry: What car number is that?

Mr. Reick: 70244. This is a car consigned from Locust Gap Colliery to Shamokin Scales. Car number 70244. Initials, "NYC." Order number, 1649. Underneath that, the initials "LA."

71 Q. Is your testimony the same with regard to the blank space?

A. Yes, sir.

Q. There was nothing written there at the time it was handed to you?

A. No, sir.

Mr. Reick: In the lower left-hand corner the figures "165;" beneath that, "5866R." With a stamp or stencil, "P. & R. C. & I. Co." "Rochester. Yds. for Orders. Rochester, N. Y. Via Lyons & N Y.C. & H." Also with stencil, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." Some writing, four lines, on the lower right-hand corner of the blank space, erased with lead pencil, not legible. The words "Freight prepaid. 35.11."

Q. Witness shown similar ticket in the same form, 1262, bearing the serial number 59; same date, March 15th, 1916. Do you identify that as one of the tickets you had that day?

A. Yes, sir.

Q. Is your testimony the same with regard to the blank space?

A. Yes, sir.

Q. No writing in the blank space?
A. Not that I remember.

Mr. Reick: Consigned from Locust Gap Colliery to Shamokin Scales. Car number, 409568. Initial, NYC. Order number, 1 HTD. Underneath that the words "J. E. Turk." Beneath that, "N.B. Jct." In the blank space, "J. E. Turk, N. B. Junction." With a stencil or stamp, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Phila'a & Reading Ry. Co." In the extreme lower right hand corner, "40.00."

Q. Witness shown similar form, 1262, serial number 31, same date, March 15th, 1916. Do you identify that as being one of the tickets you had that day?
A. Similar.
Q. And your testimony with regard to the blank space is the same, that nothing was written below the words, "Do not write in this space"?
72 A. Nothing.

Mr. Reick: Shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number, 57124. Initial, P. & R. Order number, 1645. Beneath that the letters "HA," and in the blank space the following in the extreme left corner, in pencil, "105, 2195." In the center, "821H." The same figures appear in the extreme upper right hand corner in the blank space, "821H." With a stamp, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." In pencil, "C. T. Dennis, New Columbia, Pa.," and the figures "20.18."

Q. Witness shown similar form, 1262, same date, March 15th, 1916, serial number 65. Do you identify that as one of the tickets you had that day?
A. Similar to it; yes, sir.
Q. Is your testimony the same with regard to the blank space, nothing written in it?
A. Nothing written in it; no, sir.

Mr. Reick: The figures in pencil in the left corner, "190." Beneath that this addition: $\begin{array}{r} 7600 \\ 133. \\ \hline 7733 \end{array}$ With a stamp, "Weighed & Way Billed, Shamokin Scale, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." In the center, at right angles with the printed matter on the ticket, the word "Roch." With a stamp, "P. & R. C. & I. Co. Rochester." Following the word "Rochester," written on with pencil, "Yds. for orders." Beneath that, with a stamp, "Rochester, N. Y. via Lyons & N. Y. C. & H." In pencil, "40.14."

Witness shown similar form, 1262, same date, March 15th, 1916, serial number 70. Do you identify that as one of the tickets you had that day?

A. Similar to them,

Q. And is your testimony the same with regard to the blank space, nothing written in at the time you turned it over?

A. Yes, sir.

Mr. Reick: Shipment of a car from Locust Gap Colliery to Shamokin Scales. Car Number, 76820. Initial, NYC. Order
73 number, 1649. Immediately beneath that, the initials "MC." In the blank space in the lower left hand corner the figures "275," and this addition: $\frac{6318}{3610}$. $\frac{}{9928}$ With a stamp, "Weighed & Way Billed, Shamokin Scales, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co. Freight prepaid." In the center, at right angles with the printed matter, "2318D." The same figures also appear in the upper right hand corner of the blank space, in pencil, and the following in pencil: "E. S. Adsit Coal Co. Burlington, Vt. NYC Norwood N. Y. & Rut. R. R." Beneath that the figures "36.02," evidently meaning $36.02.

Q. Witness shown similar form, 1262, with the word "Washery" written on the top; same date, March 15th, 1916. Serial number, 61. Do you identify that as one of the tickets?

A. Similar to it; yes, sir.

Q. And your testimony with regard to the blank space is the same?

A. Yes, sir.

Mr. Reick: Showing the shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number, 38071. Initial, NYC, and instead of order number——

Mr. Parry: I will admit that in all of the defendant's tickets which Mr. Constantine had, there was nothing written under the line.

Mr. Reick: Do you further admit that the shipping directions on all these tickets appear under the date of March 16th, the day subsequent?

Mr. Parry: Whatever is on them.

Mr. Reick: That is a matter for us to prove. Order number 77, car from Locust Gap to Shamokin Scales, March 15th, 1916. Weighed & Way Billed at Shamokin Scales, March 16th. Signed, "A. M. Hollis Co., Canandaigua, N. Y."

Order No. 72. March 15th, 1916. Locust Gap Colliery to Shamokin Scales. Car number, 403999. Weighed and Way
74 Billed at Shamokin Scales, March 16th, 1916. Signed, G. F. Meyers, Nor. Tonawanda, N. Y. N. Y. Erie Dely. Freight Prepaid. 40.—

Q. Witness shown form 201, original way bill. Was that one of the tickets handed you on that day?

A. A hard ticket similar to the one I handled, but a paper ticket I did not handle.

Q. Form 1285 identified by the witness. Serial number, 25. Date, March 15, 1916. Showing shipment of a car from Locust Gap Colliery to the Saint Clair scales. Order No. A, with a stencil, "Dry coal." We will ask you to look at these three.

A. Three similar ones.

Q. Witness shown form No. 1262, serial number 75; date, March 15, 1916, showing a consignment from Locust Gap Colliery to Shamokin Scales. Car number 80841; initial, NYC; order number, 1647, and beneath that the initials "MA," with a stencil in the blank space. Your testimony with regard to the blank space is the same?

A. Yes.

Mr. Reick: "Weighed and way billed, Shamokin Scales, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." Consigned to J. D. Buickley & Co., Avis, Pa.

Q. Witness shown form 1262, serial number 37, under date of March 15th, 1916, showing a shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number, 38791. Initial, NYC. Order number, 1422, with the initials "MC" beneath it. Is your testimony the same with regard to the blank space?

A. Yes.

Mr. Reick: In the blank space, with stamp, "Weighed & Way Billed, Shamokin Scales, Pa., Mar. 16, 1916. Philad'a & Reading Ry. Co." With pencil, "G. F. Meyers, Nor. Tonawanda N. Y. N. Y. C. Erie Dely. Freight Prepaid. 40.10."

Q. Witness shown an identification form 1262, serial number 58, dated March 15th, 1916, showing shipment of a car from Locust Gap Colliery to Shamokin Scales. Car number 52064. Initials, LSMS. Inster ' of the order number, the word, "Surplus." Your testimony is the same with regard to the blank space?

75

A. Yes, sir.

Mr. Reick: With the stamp, "Weighed & Way Billed, Shamokin Scales, Pa., March 18, 1916. Philad'a & Reading Ry. Co." Consigned in pencil, "J. E. Turk, N. B. Jct. Pa. 44,02."

Q. At the Locust Gap Colliery from whom did you receive these tickets?

A. The shipping clerk.

Q. What is the name of the clerk?

A. W. E. Quirk.

Q. He was shipping clerk at the Locust Gap Colliery. Do you know by whom he was employed?

A. The Coal and Iron Company.

Q. The Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. State whether or not it was the usual course for you, in moving a train of coal from that or any other colliery, to receive the tickets from the shipping clerk.

A. Yes, sir.

Q. And I believe you did say that when you surrendered your train at Locust Summit, you turned these tickets over to the yardmaster?

A. Yes sir.

Mr. Scott: Did he say who he was?

Q. The name of the yardmaster?

A. John F. Paul.

Q. By whom was John F. Paul employed?

A. Philadelphia and Reading Railway Company.

Q. That is the company by whom you are employed?

A. Yes, sir.

Q. Did you, in your train that day, have any cars which were ticketed to or consigned, as evidenced by the shipping instructions given you by the shipping clerk at Locust Gap Colliery, any car in that train consigned to any point beyond the State of Pennsylvania?

A. No, sir.

76 Q. Were any verbal instructions given to you by either the shipping clerk at the Locust Gap Colliery, or by any of your superior officers in the railway company, that any of these cars in that train were for points beyond the State of Pennsylvania?

A. No, sir.

Q. Did you have any knowledge, when you left with your train from Locust Gap Colliery, of any destination other than that indicated on the ticket?

A. No, sir.

Cross-examination.

By Mr. Parry:

Q. How long have you been working around Locust Gap Colliery?

A. Our runs vary.

Q. You are on the Shamokin Division, are you?

A. On the Shamokin Division. I have been working for the railroad company 29 years, and in the colliery service over there perhaps 10 or 15 years.

Q. Then you know the course of business up there thoroughly, I suppose?

A. Yes, sir.

Q. This is the way this thing is always done, is it not, the colliery clerk gives you tickets like this and you take the cars and haul them along towards the scale, and when you get to Locust Summit yard some other engine hauls them to Shamokin scale, is that right?

A. Yes, sir; our duty is to haul them from the colliery to Locust Summit yard, and I do, whatever colliery we are working on.

Q. These cars went to the scale; I suppose there is no doubt of that, is there, these cars went on to the scale?

A. I suppose they did, yes, sir.

Q. What makes you say that these cars were not consigned to points beyond the State of Pennsylvania? Do you mean by that,

that this writing on the space here was not there? Is not that what you mean?

77 A. Was not there, yes, sir.

Q. All the writing above the words, "Do not write in this space" was there, was it not?

A. Yes, sir.

Q. For instance, the word "Stove," and the car initials and the capacity, and this "1649 MC" was there, was it not?

A. I will not swear they were there, because the only thing I look at is the car number and the initial, but this other item may have been there and very likely was, because they always are there; but I would not swear it was there, because I could not say.

Q. You are just as sure it was there as you are this is the ticket, are you not?

A. Yes, sir, I am sure it was there, but I would not say.

Q. I am taking this first ticket, number 68. Now, the word "Stove" was there, was it not?

A. Yes, sir.

Q. What does that mean?

A. Stove coal.

Q. And this "73045 LSMS" is the car initial and number, is it not?

A. Yes, sir.

Q. This "100," what does that mean?

A. That is the capactiy of the car.

Q. I know, but what does "100" stand for?

A. One hundred thousand pounds capacity.

Q. What is this here?

A. That I do not know.

Q. You do not know what "1649" means?

A. No, sir.

Q. Do you know what "MC" means?

A. I know from my experience as yardmaster that "MC" means to furnish cars for a road on the New York Central Railroad.

Q. That weight, I suppose, while it is written above the line, that was not on at the time, was it?

A. No.

78 Q. That is put on at the scale?

A. Put on at the scales, yes, sir.

Q. Order No. 71, the letters "LA" do you know what that stands for, from your experience?

A. No, I do not know; I think "LA" stands for Pennsylvania shipment.

Q. On order No. 31, in the space marked "Order number," the initials "HA," that means a line shipment along the Philadelphia and Reading Railroad, does it not?

A. We never got any "HA" order; that is at the Summit yard, and the cars is not put in that way, that I know.

Q. Would you say that ticket was not correct?

A. No, sir, but I would not know what "HA" stands for.

Q. I think the other tickets are all "MC." When these colliery

shipments are destined to eastern points, they go to the St. Clair scale, do they not, to be weighed and way billed, and when they are destined to western points they go to the Shamokin scales and are way billed?

A. Yes, sir.

Q. Generally speaking?

A. Generally speaking.

Q. You have no scale at the colliery?

A. No, sir.

Q. Or no facilities for weighing or billing coal?

A. Not at the colliery, no, sir.

Q. These tickets, I understand, represent the cars that you had with you on this train that Mr. Hancock was working on at the time he was hurt, is that right?

A. Yes, sir.

Q. Are you familiar with the way the work is operated at Shamokin scales?

A. No, sir; I never get down there.

Q. You swore to an affidavit in this case, did you not?

A. Yes, sir.

Q. On July 3d, 1917?

A. I suppose that was the date; I do not know just exactly the date.

79 Q. I suppose that the tickets upon which this affidavit was based were the tickets to which you testified here, were they not?

A. Yes, sir.

Q. You had nothing else in mind, did you?

A. Nothing else, no, sir.

Q. Simply that these car tickets, when you got them, were ticketed from Locust Gap to Shamokin scales?

A. Yes, sir.

Q. There is not anything at Shamokin scales but the tracks and the scale, is there; I mean there is no town there, is there?

A. Oh, yes.

Q. Is it right in Shamokin or beyond there?

A. The scale is right in the yard; Shamokin yard is the town, of course.

Q. Does a great deal of coal go out there to be weighed?

A. Yes, I suppose so.

Q. What collieries do you haul it from, besides Locust Gap?

A. Haul it from Alaska Colliery, Reliance Colliery, Enterprise, and Corbin.

Q. How many cars do you suppose you haul a day?

A. Approximately, from Locust Gap, about forty or fifty a day; from Alaska Colliery, only haul about fifteen; Reliance Colliery, about twelve to fourteen; Corbin Colliery, from twenty-five to thirty; Enterprise Colliery, get there only occasionally.

Q. Most of that goes to Shamokin scale, does it?

A. Well, outside of Locust Gap and Reliance Colliery, it most all goes to the St. Clair scale.

Q. About half and half, would it be?
A. About half and half, I suppose.

Redirect examination.

By Mr. Reick:

Q. You said that on one of these forms that was shown to you by Mr. Parry, the initials "MC," from your experience as
80 yardmaster, indicated that it was a car intended for shipment to a point on the New York Central Railroad?
A. Yes, sir.
Q. And that might equally apply to a car intended for shipment to a point on the New York Central Railroad within the State of Pennsylvania, as without?
A. Just to the shipment, as far as I know, to the New York Central Railroad.
Q. That which goes from your railroad?
A. To the New York Central. It means to apply to New York Central cars in that order.
Q. Mr. Parry would have you say that your affidavit simply said that you hauled cars from Locust Gap Colliery to Locust Summit; but you did say more than that; you said that in the train that you hauled there were none of the cars that were consigned or ticketed to a point beyond the limits of the State of Pennsylvania?
A. Yes.

Mr. Parry: I did not ask him that: I asked him if the tickets on which this affidavit is based were the same tickets as he testified to.
Mr. Reick: And you said, "Then you simply hauled from Locust Gap to Locust Summit." I wanted to clear that impression up.

Q. Mr. Parry would have you testify to the Commission——

Mr. Parry: Is this rebuttal, or what? I cross-examined the witness, but I do not think you have any right to cross examine him.
Mr. Mackey: Proceed as rapidly as you possibly can.

Q. Shamokin scales is within a very short distance of the town of Shamokin, which is a large, populous town in Northumberland County, is it not?
A. Yes, sir.

Recross-examination.

By Mr. Parry:

Q. These orders that have "MC" on them did not cover Shamokin coal, did they?
81 A. Did not cover Shamokin coal?
Q. Yes.
A. No, sir.
Q. That coal was going beyond Shamokin, was it not?

A. That is what I said; it meant a car to be applied on the N. Y. C. road, or an N. Y. C. & H. car. That is as far as my knowledge goes; when you get a call for that as a yardmaster we apply an N. Y. C. & H. car on that coal.

Q. That is to get the New York Central cars back on their own road, I suppose.

A. Yes, sir.

Q. And they go up over the road to Newberry Junction and then to the New York Central; that is right?

A. Yes, sir.

By Mr. Reick:

Q. The understanding that you have of the initials "MC" and these other initials that have been referred to, they are part of a code *or* instructions given to you by your company for the purpose of——

Mr. Parry: Ask him to explain it.

Q. Explain what "MC" is and how you get it and what the effect of it is, and what it means.

A. As a yardmaster you get a code from Mahanoy Plane scale in the evening, calling for the cars for the collieries for the next day, the kind of cars to be furnished. "MC" means that an N. Y. C.—they may call for twenty, "MC" call. That means to furnish them with twenty N. Y. C. & H. cars. They may say five "GK;" that means five Pennsylvania cars; and they may save five "MC's;" that means we must furnish them with an N. Y. C. car or car suitable to load to Buffalo dock. That is what I mean by saying that "MC" means to furnish a N. Y. C. & H. car, if possible, to furnish ten or twenty, whatever it means, at the colliery that day, for loading to the N. Y. C. & H. road.

Q. That is instructions you get from a secret code that the company gives to its employes in the position of yardmaster and otherwise, for their instruction, and is not any information that is given to the public or open to the public's knowledge?

82 A. That is right.

By Mr. Parry:

Q. You do not know who may get it, do you; it is given to you, is it not?

A. It is given to me as yardmaster.

Q. Do you know who else it is given to?

A. It is there in the office, in the Locust Summit office of the yardmaster.

Mr. Parry: It is tacked up in the office.

Q. Do you ever know of that being given to you in your capacity as a train conductor?

A. No, sir.

Q. Is that information given ordinarily to the train conductors?
A. No, sir.
Q. And the information and the knowledge that you have of this secret code——

(Objected to.)

Q. Is the knowledge that you gained while you were employed by this same company as yardmaster?
A. Yes, sir.

By Mr. Parry:

Q. It is true, no matter how you gained it; there is no doubt about its being true, is it, this information?
A. Yes.
Q. Whether you got it as yardmaster or conductor. Did you ever see it tacked up in the office there when you went in as a conductor?
A. No, sir.
Q. It is not tacked up there?
A. No, sir; it is kept in the drawer.
Q. Is it not tacked up in the scale office?
A. It may be tacked in the scale office; I never was in the scale office.

WILLIAM E. QUIRK, called and sworn:

Examination.

By Mr. Mackey:

Q. What is your full name?
83 A. William E. Quirk.
Q. Where do you live?
A. Locust Gap.

By Mr. Reick:

Q. Where were you employed on the fifteenth day of March, 1916?
A. Shipper at Locust Gap Colliery.
Q. By whom were you employed?
A. Philadelphia and Reading Coal and Iron Company.
Q. Forms 1262, purporting to be tickets for Western gondola cars shipped by the Philadelphia and Reading Coal and Iron Company per the Philadelphia and Reading Railway Company, under date of March 15th, 1916, shown witness.. Will you tell us whether or not those tickets are in your handwriting?
A. That is all in my handwriting.

Mr. Reick: The witness indicates that all on the tickets above the heavy line and the words "Do not write in this space" is in his handwriting.

Q. Tell us, first of all, what the duties of your position are.
A. Shipping coal and making up the outside payroll, and other clerical work.
Q. Then you are the man in direct charge of the shipping of the cars loaded at the Locust Gap Colliery?
A. Yes, sir.
Q. And you were in the pursuit of that employment on the fifteenth day of March, 1916, the date indicated on these tickets?
A. Yes, sir.
Q. And in the course of that employment you did make out these tickets that are known as Form 1262?
A. Yes, sir.
Q. I ask you, first of all, is that a Philadelphia and Reading Coal and Iron Company, or a Philadelphia and Reading Railway Company form?
A. That I could not say; it is a form used by the Philadelphia and Reading Railway Company, a ticket to ship coal.
84 Q. By whom are these forms furnished you, the Coal and Iron or the Railway Company?
A. The Coal and Iron.
Q. You have heard Mr. Constantine testify, did you?
A. I heard part of his testimony.
Q. Did you hear his testimony with regard to the location of Locust Gap Colliery, when he said it was in Northumberland County, this State? That is correct?
A. Yes, sir.
Q. And he said that it was about two miles distant from the Locust Summit, or that Locust Summit was about two miles distant from Locust Gap Colliery, is that correct?
A. Two miles.

Mr. Parry: It does not appear to me that there is the slightest dispute of fact here between Mr. Reick and myself. I thought from his petition that he denied some of the facts. I am perfectly willing to agree to all these facts. I have set them all forth in my answer.
Mr. Mackey: It seems to me you both agree that these cars by this immediate train crew were taken from one point in Pennsylvania to another point in Pennsylvania.
Mr. Reick: Yes, sir.
Mr. Mackey: At the latter point, however, the same cars were re-billed to other points.
Mr. Reick: Yes, that is the proposition.

Q. I believe you did say you are employed by the Coal and Iron Company?
A. Yes, sir.
Q. From what source do you receive the information or the direction to consign these cars, as evidenced by the tickets themselves?
A. I receive my orders by telegraph from the shipping agent at Mahanoy Plane scale, daily.

Q. The shipping agent at Mahonoy Plane scales is employed by what company?
A. I could not say.
Q. Do you know that he is a Coal and Iron Company employee?
A. I could not say.
85 Q. But you did get the instructions that are set forth in these tickets from the shipping clerk at Mahanoy Plane scale?
A. Yes, sir.
Q. To whom did you deliver these tickets?
A. Mr. Constantine.
Q. The conductor of this train?
A. Yes, sir.

Cross-examination.

By Mr. Parry:

Q. You say you wrote all this blue pencil handwriting on here?
A. Yes, sir.
Q. What do the initials "MC" stand for?
A. Out of State points on the New York Central; out of Pennsylvania, State of New York.
Q. Where did you get that "MC" that you put on there?
A. From the shipping agent at Mahanoy Plane scales.
Q. I suppose you use that code very many times daily, do you not?
A. Positively.
Q. How long has that been the code letter for the New York Central points, New York State?
A. I have been in the employ 14 years, and it has been for the last 14 years.
Q. The code letters "HA" on ticket No. 31, what do they stand for?
A. That is a line order.
Q. You mean to a point on the line of the Philadelphia and Reading Railway?
A. Yes, sir.
Q. Has that been in use for a long time?
A. The same number of years; ever since I have been in the service.
Q. The code letters "MA" on ticket No. 75, what do they stand for?
A. "MA" means for points on the Beech Creek Railroad.
86 Q. That is a line owned by the New York Central, is it not?
A. Yes, sir.
Q. It is in Pennsylvania, is it not?
A. No, sir.
Q. Partly in Pennsylvania?
A. Partly in Pennsylvania.
Q. I show you ticket No. 74. You made that out, did you not?
A. Yes, sir.
Q. The date seems to be a little illegible; it says March 20th, 1917. Is that the correct date for that ticket, or is it a mistake?

A. It was a car that had to be re-cleaned or something; I could not just positively say.

Q. It says, "Shop at Shamokin for brake rigging." I suppose that means broken brake rigging?

A. That would be hauled on the siding until they would get it in a safe part of the train to haul.

Q. Was this car which this ticket represents, in this train of Conductor Constantine, do you know?

A. It could have been, yes, it could have been in the train. I may have had my dater set wrong, too, for that date, a clerical error.

Q. This ticket, No. 74, covering New York Central car 79749, was that one of the tickets you gave Mr. Constantine that day, despite the fact it is not dated that day?

A. Mr. Constantine would have a better record for the ticket. I could have made a clerical error with my dater there; and if this is Mr. Constantine's slip for that day, he brought it out.

Q. Do you know Mr. Constantine's writing?

A. Yes, sir.

Q. Is that it, that slip I show you?

A. Yes, sir.

Q. Does that car No. 79749 appear on there?

A. It is right there; it would be the last car.

87 By Mr. Reick:

Q. But it is marked off, too, is it not?

A. No, sir.

Q. See if it is not circled and marked off from the others with a pencil, indicating that it was not taken out.

By Mr. Parry:

Q. Do you know what that circle indicates?

A. No.

By Mr. Reick:

Q. What does "MC" mean?

A. I think I have answered that.

Q. Answer it again.

A. Points in New York State.

Q. You did not say that a moment ago; you said points on the New York Central.

A. No.

Mr. Mackey: No, he said points outside of the State, and New York State.

Q. If a car was intended for shipment to a point on the New York Central Railroad in Pennsylvania, how would it be marked?

A. I do not know as the Pennsylvania Railroad enters into the New York Central.

Q. I did not say that. Listen to the question again. If a car

left Locust Gap Colliery intended for a point on the New York Central Railroad within the State of Pennsylvania, by what letters in your code would it be marked?

A. Within the State of Pennsylvania?

Q. Yes, sir, on the New York Central Railroad.

A. I never had a shipment of that kind; I could not tell you.

Mr. Parry: The New York Central does not run into Pennsylvania; it is the Fall Brook and Beech Creek.

Q. Did you ever have a shipment for points on the New York Central in Pennsylvania?

A. No sir; not that I can recall.

Q. And you are unable to tell us just how a car intended for shipment to a point on the New York Central Railroad within the State of Pennsylvania would be marked?

88 A. Any New York Central orders are marked "MC."

Q. Would that apply if it were to a point within the State of Pennsylvania?

A. That is what I would like a little information on. Does the New York Central Railroad enter the State of Pennsylvania?

Q. The question is, from your code, whether "MC" applies to the New York Central as a railroad, or whether it applies within or without the State. That is the question, and your attention is directed to that.

A. Out of the State?

Q. Out of the State.

A. Yes, sir.

Q. And you cannot tell us how a car intended for shipment on the New York Central Railroad within Pennsylvania would be marked, can you?

A. I never had any shipment.

By Mr. Parry:

Q. The New York Central's line in Pennsylvania is called the Beech Creek Railroad, is it not? That is the railroad that connects with the Reading at Newberry Junction, is it not?

Mr. Reick: The Fall Brook and Beech Creek, known as the New York Central, running right through to Clearfield.

Q. Have you a code word for the Beech Creek?

A. That "MA" order is Beech Creek.

Q. "MA" is the Beech Creek code word?

A. Yes, sir.

By Mr. Reick:

Q. "MA," and the New York Central is "MC"?

A. Yes, sir.

Q. What have you for the Fall Brook?

A. I guess the Fall Brook, that "MA" order would cover the Fall Brook and Beech Creek.

Q. If a car were shipped from Locust Gap Colliery over the Philadelphia and Reading to Renovo or Jersey Shore, Pennsylvania, how would it be marked?

A. Shamokin scales.

89 Q. If a car were intended to go to North Tonawanda, New York, how would it leave your colliery?

A. I would bill to Shamokin scale.

Q. If it were to go to Burlington, Vermont, how would you bill it?

A. I would not bill it at all. The clerks in the Shamokin scales would bill it.

Q. How would you ship it?

A. I would ship to Shamokin scales. I never had anything like this; this is out of the ordinary.

Q. When the cars left your office or your colliery, you had no knowledge where those cars were going, beyond Shamokin or St. Clair scales, did you?

A. I know those cars were going out of the State.

Q. How?

A. On that "MC" order.

Q. By reason of this code that is intended for the employees of the railroad and the Coal and Iron Company?

A. Yes, sir.

Q. And that is the only way, is that right?

A. That I could not tell, either.

Q. That is the only way you had of knowing?

A. Yes.

By Mr. Mackey:

Q. Would it be necessary for you to know anything about the destination of a car of coal leaving your colliery?

A. I am not supposed to know. I simply ship it to the scales, and it is re-billed at the scale.

Q. Your order is, ship so many cars of coal to the scales?

A. Yes, sir.

Q. Do you put these tags on with various letterings when they leave your colliery—"MC" and "MA?"

A. Yes, sir.

Q. Why do you do that? Why are you required to do that? Why don't you just send a certain number of cars up to the scales and let the re-billing occur there?

A. It has been customary ever since I have been on the job, and so it is with all shippers. It may help the scale men out

90 when they get these tickets; they know what line to ship over. We do not bill; we just ship to the scales, and the cars are weighed and re-ticketed and re-billed from there.

Q. This is done for the purpose of secrecy as against competition, is it not?

A. Not that I know of.

Mr. Parry: I do not think so.

A. Those here are posted up at the office, that "MC," and the different railroads. If I had my list here I could explain better.

Q. When you send these train out, then you know and you mark certain of them for points outside of the State?

A. Yes, sir.

Q. You know that there is going to be practically a continuous journey of that car from your colliery to a point without the State?

A. Yes, sir.

Q. And the only interruption of that journey is to weigh them at the scales?

A. Yes, sir.

By Mr. Scott:

Q. And re-bill?

A. They make out the freight bills there.

Q. Freight bills, you say?

A. Yes, sir.

By Mr. Reick:

Q. Where do you get this code from?

A. I have already explained that?

Q. Where?

A. Mahanoy Plane scale.

Q. When you started in the employ of the Philadelphia and Reading Coal and Iron Company as a shipping clerk, from whom did you receive the code explaining the meaning of the various initials shown on these several tic' ets?

A. It is self-explanatory.

Q. That is not an answer to the question. (Question read.)

A. The code has already been there, by the shipper that was there before me.

91 Q. Then when you entered the service of this company, part of the instructions you received from your predecessor was the explanation of this code, is that correct?

Mr. Parry: Do you think it is relevant to go back fourteen years and ask him what he did fourteen years ago?

Mr. Reick: The relevancy is this: Here is a company maintaining a code secret between itself and its employees——

Mr. Parry: You put the secrecy in.

Mr. Reick: A code secret between these various companies, the Coal and Iron Company and the Railway Company and its employees, for some purpose. Surely we have a right to show that such a code is knowledge to these employees for their own purposes. The public should not be bound and could not be expected to be bound, having no knowledge of any such arrangement. We must go by what is patent on the face of the ticket.

Mr. Mackey: I think you have shown all that is necessary. I think that as far as this code is concerned, it resolves itself around the legal proposition whether or not this train crew taking these coal

cars from the colliery to the scales and leaving them there, whether that constitutes one separate and distinct journey for that purpose and for that crew. If it is one continuous trip from the colliery to the point of destination outside of the State, you must recognize the fact that your man was engaged in interstate commerce.

Mr. Parry: I do not see any difficulty in this thing at all. I am willing to admit that this man was killed while they were taking certain cars out of a colliery; that those cars were then hauled to Locust Summit, where they were placed on tracks; that a short time thereafter, I do not know whether it was the same day or the next day, some of them were hauled to Shamokin scale and some of them were hauled to St. Clair scale; that when they got there, they were weighed and waybilled and shipped to the points shown on those car tickets.

Mr. Mackey: Now I think you have everything. Have you anything to offer?

92 Mr. Parry: Don't you think, in view of the fact that agreements and admissions have heretofore been made and filed in this case, and subsequently repudiated by the claimant, that a formal agreement of facts should be drawn up in writing, approved by the Compensation Board, and submitted?

Mr. Mackey: The stenographer has read to us the agreement of facts as stated by you and as agreed to by the other side, and there will be no getting away from that by either side. They are the facts. The facts are sufficiently clear to us.

Mr. Parry: I also want on the record here that those cars are not unloaded at Shamokin; they are simply run over the scale and way billed and go right out.

Mr. Mackey: We understand that.

Mr. Scott: Your statement implies that.

Mr. Parry: The tickets show the date they left the colliery, and the date they left the scale, I think in most cases the following day.

Mr. Reick: They will be left here, will they not?

Mr. Parry: You are going to offer them in evidence, are you not?

Mr. Reick: We propose to offer them; they were their property. We formally offer them in evidence and ask that they be marked.

(Tickets—Form 1262—Nos. 31, 37, 58, 59, 61, 65, 68, 70, 71, 72, 74, 75, and 77, marked respectively Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, 1/16/18, H. C. W. Ticket—Form 1285, No. 25, marked "Exhibit No. 14, 1/16/18, H. C. W.")

CHARLES A. CONSTANTINE, recalled by claimant:

By Mr. Reick:

Q. Your attention having been directed to form 1262, serial number 74, about which there was some doubt in your mind when on the stand a moment ago, as to whether or not that was a part of your train, and your recollection having been refreshed, what do you say about this car 74?

93 A. That car I got a ticket for, and when we got down it was condemned by the inspector, and that is where we made our cut, we pulled down ahead of the car and left it stand, because it was condemned.

Q. And in the cutting of that car is where this man met his death?

A. Yes, sir.

By Mr. Parry:

Q. Then that particular car was a car in your train at the time Mr. Hancock got hurt?

A. It was being pulled down from the colliery, yes. We cut ahead of it, because we had no billing for it.

Mr. Parry: Then that can go in with the other tickets, I suppose.

Mr. Reick: Yes.

EDWARD M. STEWART, called by claimant, sworn:

Examination.

By Mr. Reick:

Q. What position do you occupy in the employ of the Philadelphia and Reading Railway Company?

A. Weighmaster and billing clerk.

Q. Where?

A. At Shamokin scales.

Q. Were you so employed on the 15th of March, 1916?

A. Yes, sir.

Q. You were subpœnaed to bring with you all records, books and papers which would show the shipment of certain cars, the numbers being given to you, from Shamokin scale to various points, and you produce those and swear that those are copies taken from your original record, from this book (indicating)?

A. Yes, sir.

Mr. Reick: In view of that testimony, while it is not the best evidence, for the purpose of convenience we ask permission to offer these in evidence, instead of the book.

Mr. Mackey: All right; offer them.

Mr. Reick: We formally offer them.

94 Mr. Parry: Put in by agreement.

(Copies or way bills offered, numbered 979, 758, 773, 748, 756, 760, 757, 767, 763, 8, 865, 785, and 6105, marked respectively Exhibits Nos. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, 1/16/18, H. C. W.)

EDWARD M. STEWART, recalled by defendant:

Examination.

By Mr. Parry:

Q. You are the weighmaster at Shamokin, are you not?
A. Yes, sir.
Q. What was done with the coal covered by this way bill? Was it unloaded at Shamokin, or what happened to it?
A. No, it went forward as consigned, as per those billings.
Q. What do you do with it there?
A. What do you mean?
Q. At the scale. What do you do with it?
A. The coal is forwarded the way it is billed or shipped.
Q. Weigh it and bill it?
A. Weigh it and bill it.
Q. I suppose the weighing is done for the purpose of figuring the freight charges?
A. Freight charges and rate per ton.
Q. I see here way bill No. 979, covering car New York Central, 79479, from Shamokin scale to Rochester, New York; rate $1.90 per ton. That is correct, is it?
A. Yes, sir.
Q. Does that charge cover the haul from the colliery to Rochester, New York, or the haul from Shamokin scales to Rochester, New York?
A. To the best of my knowledge that covers it from the colliery right through to the destination.
Q. Do you charge any separate or additional sum for hauling the car from Locust Gap Colliery to Shamokin scale, other than that figure, at that rate?
A. No, sir; not any.
95 Q. Who pays that?
A. The party getting the coal.
Q. The consignee?
A. Yes.
Q. They pay for the whole haul, do they?
A. Yes, sir; that is a collect shipment. This one in particular is a prepaid shipment.
Q. Who pays it when it is prepaid?
A. The party getting the coal pays for it eventually.
Q. You mean the Coal and Iron Company, the shipper, advances the freight charges?
A. They advance the freight charges.
Q. And get it out of the consignee?
A. It is added to the price of the coal.
Q. There is not any difference in the freight charge, is there?
A. No, there is no difference whatsoever.
Q. That is true of all those bills, is it not?
A. Of all of them.

By Mr. Reick:

Q. Glance through these tickets and see whether the majority of them do not indicate that the freight has been prepaid.

(Witness complies.)

Q. Out of ten, two were collect and eight prepaid?
A. Yes.

(Testimony closed.)

I hereby certify that the proceedings, evidence and findings are contained fully and accurately in the notes taken by me upon the trial of the above case, and that this copy is a correct transcript of the same.

H. C. WILSON,
Stenographer.

(Here follow way bills marked pages 96 to 108.)

Exhibit. No. 1.

Ex. no. 6
1/16/18 HCK.

Form 1262

Western GONDOLA Car

12-14-820 T.

No. 31

MAR 15 1916 19

Shipped by **The Philadelphia & Reading Coal and Iron Company**
Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Pea	57124	P. R.	45	1645 N.A.	27	600

Weighed & Way Billed
Shamokin Scale, Pa. 105
MAR 16 1916
PHILA'DA & READING RY. CO.
2195

DO NOT WRITE IN THIS SPACE.

821 H

821 H

C J Dennis
New Columbia Pa
20.18.

Ex No. 2
1/16/18 NCW

Form 1263

Western GONDOLA Car MAR 15 1916 12-14-320 T

No. 27 _____ 19___

Exhibit No. V.

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT		
Pea	38791	N Y C	100	1422 Mc			

Weighed & Way D 37600 DO NOT WRITE IN THIS SPACE.
Shamokin Scale, I...
MAR 16 1916
PHILA'DA & READING RY CO. 17.5 70.00 88

78 a

G F Meyers
Nor. Tonawanda N Y
N Y C Erie Dely

Freight Prepaid 40.10

Exhibit No. 3

Form 1262

Cy No. 3
1/16/18 NCW

No. 78 Western GONDOLA Car MAR 15 1916 12-14-320 T

Shipped by The Philadelphia & Reading Coal and Iron Company
Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Buck	52064	LS MS	100	Surplus	flat	

Weighed & Way Billed Shamokin Scale, Pa., MAR 18 1916 PHILA'DA & READING RY. CO. 39700 DO NOT WRITE IN THIS SPACE.

Hold 3/15/16 10 P.M.

1 H
J E Turk
NBJct Pa

44.02

Ex No. 4
1/6 18 HCW
12-14-320 T

Form 1262

Western GONDOLA Car MAR 1 5 1916 19

No. 59

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

Exhibit No. 4

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Bulk	409568	PRC	100	INTD JE Tunk NB Jct	37100	

DO NOT WRITE IN THIS SPACE.

Weighed & Way Billed
Shamokin Scales, Pa.,
MAR 1 6 1916
PHILA'DA & READING RY. CO.

JE Tunk NB Junction

40.00

Case No. 5 1/16/18 NCW

Form 1202

Western GONDOLA Car

12-14-320T

No. 61

MAR 15 1916 19

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

Exhibit. No. 5.

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Buck	38071	NYC	100	Supplies	37400	

Weighed & Way Billed
Shamokin, Scale, Pa.,
MAR 16 1916
PHILA'DA & READING RY. CO.

DO NOT WRITE IN THIS SPACE.

Hold 3/16/16 1 P. M.

4 L

J E Turpe
Shamokin Pa
40.

Ex No. 6
1/16/18 HCW 12-14-3207

Form 1262

Western GONDOLA Car

No. 65

MAR 15 1916 19

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

Exhibit No. 6.

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Egg	38020	44C	100	1726 N4C	36700	

Weighed & Way Billed
Shamokin Scales, Pa.,
MAR 16 1916
PHILA'DA & READING RY. CO.

DO NOT WRITE IN THIS SPACE. R

190 4600 183 / 7733

4 Gds. for Orders
P+R Co 9 C
Rochester
Rochester, N.Y.
Via Lyons N4C & N
40.14

Exhibit. No. 7

Form 1262

Ex No 7
1/16/18 NCW 12-14-32

No. 68

Western GONDOLA Car

MAR 15 1916 19

Shipped by The Philadelphia & Reading Coal and Iron Company

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT
Stove	73045	~~JSMS~~ ~~NYC~~	100	1649 ~~NC~~	~~36500~~

Weighed & Way Billed
Shamokin Scale, Pa.,
MAR 1 6 1916
PHILA'DA & READING RY. CO.

DO NOT WRITE IN THIS SPACE.

195
7556

2728a

2728a

Freight Prepaid

Ebner & Whaling
Webster, N.Y.
NYC
OK. 38.15

Exhibit No. 8.

Form 1262

Cyl No. 8
1/16/18 NCW 12-14-32 OT

Western GONDOLA Car

No. 10.

MAR 15 1916 19

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT
Stove	76820	Nyc	80	1649 Mc	~~37000~~

Weighed & Way Billed
Shamokin Scale, Pa.,
MAR 16 1916
PHILA'DA & READING RY. CO.

DO NOT WRITE IN THIS SPACE.

2318 D

E S Adsit Coal Co.
Burlington, Vt
Nyk Norwood Ry
Rut. RR. 36.02

2318 D

Freight Prepaid

275

6318
3610
9928

Ex. No. 9
1/16/18, H. C. N.

Form 1262

No. 71

Western GONDOLA Car

MAR 15 1916

12-14-32 oT

19

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

Exhibit No. 9

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Pea	70244	N.Y.C.	80 ~~100~~	1649 La	38	000

Weighed & Way Billed 165
Shamokin Scale, Pa.,
MAR 16 1916
PHILA'DA & READING RY. CO.

DO NOT WRITE IN THIS SPACE.

5866 R
Lgs. for orders

4 R C + D Co
Rochester, N.Y.
Via Lyons N Y C + H.

Freight
Prepaid

Ex. No. 10.
1/16/18, N.C.K.

Exhibit No. 10.

Form 1282

5207

Western GONDOLA Car

No. 7½

MAR 15 1916 19__

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT		
Pea	40 3999	N.Y.C.	100	1649 MC			

Weighed & Way Billed Shamokin Scale, Pa., MAR 16 1916 PHILA'DA & READING RY. CO. 3720 175 7000

DO NOT WRITE IN THIS SPACE.

780a

780a

G. F. Meyers
Nor. Tonawanda, N.Y.
N.Y.C. Tree Delv
Freight Rapid.
48.—

Ex. No. 11
1/16/18

Form 1202

Shop

N. C. T.

No. 74

Western GONDOLA Car

12-14-320 T

MAR 2 0 1916

Shipped by The Philadelphia & Reading Coal and Iron Company

Per Philadelphia & Reading Railway

From Locust Gap Colliery, to Shamokin Scales Scales.

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Stone	79749	N.Y.C.	100	1649 M.C.		

Exhibit No. 11.

3700

Weighed & Way Billed
Shamokin Scale, Pa.
MAR 2 1 1916
PHILA'DA & READING RY. CO.

DO NOT WRITE IN THIS SPACE

Shop car at Shamokin for Brake Rigging

P R R & D & C Co
Rochester
Rochester, N.Y.
Via Lyons N.Y.C. & H

~~East~~ R.
yds. for orders
76.86
40.09

Ex. No. 12
1/16/18 N.C.H

Exhibit No. 17

Form 1262

Western GONDOLA Car

MAR 15 1916

12-14-320 T

No. 45

19

Shipped by **The Philadelphia & Reading Coal and Iron Company**

Per Philadelphia & Reading Railway

From Locust Gap *Colliery, to* Shamokin Scales *Scales.*

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT		
Nut	80641	N.Y.C.	80	1647 Ma			

Weighed & Way Billed Shamokin Scale, Pa., MAR 16 1916 PHILA'DA & READING RY. CO.

36200 165 1775

DO NOT WRITE IN THIS SPACE.

12831

12831.

J. D. Buckley & Co.
Ans. Pa.
B L 35.—

Ex. no. 13
1/16/18 HCW.

Exhibit No. 13.

Form 1262

No. 77

Western GONDOLA Car

MAR 1 5 1916

12-14-320 T

Shipped by The Philadelphia & Reading Coal and Iron Company

Per Philadelphia & Reading Railway

From Locust Gap Colliery, to Shamokin Scales Scales.

SIZE	CAR NUMBER	INITIAL	CAPACITY	ORDER NUMBER	WEIGHT	
Nut	38787	N.Y.C	100	1776 M.C.		

37300

Weighed & Way Billed
Shamokin Scale, Pa. 140 Tenera 7190
MAR 16 1916
PHILADELPHIA & READING RY. CO.

DO NOT WRITE IN THIS SPACE.

640a

640a A. M. Hollis & Co
Canandaigua N.Y.
Freight Prepaid. N.Y.C. 41.00

Endorsement: No. 64, January Term, 1919—Page 127—In the Supreme Court of Pennsylvania, Eastern District—Mc
Hancock vs. Philadelphia and Reading Railway Company, Appellant—Petition of the Appe
testimony with the record—Filed in Supreme Court Feb.
for Petitioner—Feb. 19,

109 In the Supreme Court of Pennsylvania, Eastern District, January Term, 1919.

No. 64.

MARGARET L. HANCOCK

v.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant.

Appeal from C. P., Schuylkill.

Filed March 24, 1919.

Per Curiam:

The sole contention of the appellant is that at the time the deceased was killed he was engaged in moving interstate commerce cars. This was a question of fact, and the finding of the compensation board was that the cars of coal in the train upon which the deceased was working were being transported from the mines to different yards within the state, for the convenience of the shipper, and that the subsequent shipments of any of them upon which the deceased had worked to a point without the state were made after his death and after the train crew with which he had worked had severed its connection with the cars. This finding was conclusive upon the learned court below: Poluskiewicz v. Philadelphia & Reading Coal & Iron Company, 257 Pa., 305.

Appeal dismissed and award affirmed.

Endorsement: 64 January Term, 1919. Margaret L. Hancock v. Philadelphia and Reading Railway Company, Appellant. Appeal from C. P., Schuylkill. Appeal dismissed: Per Curiam. Filed in Supreme Court Mar. 24, 1919, Philadelphia. J. H. B.

110 Supreme Court of the United States, October Term, 191–.

No. —.

PHILADELPHIA AND READING RAILWAY COMPANY, Plaintiff in Error,

vs.

MARGARET L. HANCOCK.

Petition for Writ of Error to the Supreme Court of Pennsylvania.

To the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and to the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, and to the other Justices of the said Honorable Court, and to the Honorable Supreme Court of the United States:

The Petition of Philadelphia and Reading Railway Company, a corporation organized and existing under the laws of the State of Pennsylvania, respectfully represents:

1. That on July 29, 1916, a claim petition under the Workmen's Compensation Act of the State of Pennsylvania was filed with the Workmen's Compensation Bureau of the said State on behalf of Margaret L. Hancock, claimant, against Philadelphia and Reading Railway Company, a corporation organized and existing under the laws of the State of Pennsylvania, as defendant, in which it was alleged that the claimant's husband, John R. Hancock, died as the result of an accident occurring in the course of his employment, and at the time of the accident, he was employed by Philadelphia and Reading Railway Company.

2. That on August 4, 1916, the defendant, your petitioner herein, duly answered the said petition denying liability to pay compensation, on the ground that both claimant's decedent, and the defendant were engaged in interstate commerce at the time the former was injured. Whereupon on August 18, 1916, a hearing was had
111 before the Referee of the Second Compensation District of the State of Pennsylvania, who on August 19, 1916, made an award of compensation against the defendant of $5,769.64. From this award the defendant duly appealed to the Workmen's Compensation Board of Pennsylvania, and on January 9, 1918, the said Board allowed the appeal, and on January 16, 1918, heard the case de novo upon the petition aforesaid.

3. That on February 14, 1918, the Workmen's Compensation Board of Pennsylvania made an award against the defendant of $6,272.39, and from this award the defendant duly appealed to the Court of Common Pleas of Schuylkill County, in the State of Pennsylvania, as of March Term, 1918, No. 234, filing exceptions thereto, to the effect that the said award of the Workmen's Compensation

Board was in conflict with the provisions of the Act of Congress of April 22, 1908, Chapter 149, in violation of Article 1, Section 8, of the constitution of the United States and in violation of the XIV Amendment to the Constitution of the United States, but on April 22, 1918, the said Court of Common Pleas of Schuylkill County affirmed the judgment of the Workmen's Compensation Board and dismissed the appeal, whereupon the defendant duly appealed to the Supreme Court of the State of Pennsylvania as of January Term, 1919, No. 64.

4. The Act of Assembly of the State of Pennsylvania of June 2, 1915, known as the Workmen's Compensation Act, provides inter alia:

Section 409. A referee's findings of fact shall be final, unless the Board shall allow an appeal therefrom as hereinafter provided. The Board's findings of fact shall in all cases be final.

From the Referee's decision on any question of law an appeal may be taken to the Board, and from any decision of the Board on a question of law an appeal may be taken to the courts as hereinafter provided.

112 Section 419. Any party in interest may, within ten days after notice of the referee's award or disallowance of compensation shall have been served on him, take an appeal to the Board on the grounds: (1) That the award or disallowance of compensation is not in conformity with the terms of this act, or that the referee committed any other error of law; or (2) that the findings of fact and award or disallowance of compensation was unwarranted by the evidence; or because of fraud, coercion, or other improper conduct by any party in interest.

Section 420. Whenever an appeal shall be based upon an alleged error of law, it shall be the duty of the Board to grant a hearing thereon. The Board shall fix a time and place for such hearing, and shall serve notice thereof on all parties in interest.

As soon as may be after any such hearing, the Board shall either sustain or reverse the referee's award or disallowance of compensation, or make such modification thereof as it shall deem proper.

Section 421. Whenever an appeal shall be taken on the ground that the referee's award or disallowance of compensation was unwarranted by the evidence, or because of fraud, coercion, or other improper conduct by any party in interest, the Board may, in its discretion, grant a hearing de novo or sustain the referee's award or disallowance of compensation. If the Board shall grant a hearing de novo, it shall fix a time and place for the same and shall notify all parties in interest.

Section 425. If any party in interest shall desire to appeal from the decision of the Board on matters of law, he shall, within ten days after notice of its decision shall have been served on him, file

a notice of appeal with the prothonotary of the court of
113 common pleas of the county in which the accident oc-
curred, or of the county in which the adverse party resides, or has a permanent place of business, or, by agreement of the parties, to the court of common pleas of any other county. In such case it shall be the duty of the Bureau, within ten days, to prepare and mail or deliver to the prothonotary of the proper county a transcript of the agreement or finding of fact and award or disallowance of compensation, or modification thereof, involved in the appeal.

Any appeal from a decision of the Board to the courts of common pleas, and from them to the Supreme or Superior Court, shall take precedence over all other civil cases.

5. That on May 6, 1918, the Supreme Court of the State of Pennsylvania handed down a decision in the case of McCauley vs. Imperial Woolen Company, 261 Pa. 312, in which it was held that a finding of fact without legal evidence is an error of law, but that the right of review by the Supreme Court is on certiorari alone, and while the Court may examine all that is properly contained in the record sent to the Common Pleas by the Workmen's Compensation Board, including the findings and reasons given in the Court below as the basis of its decision, it may not examine the notes of testimony and if they are included in the record they will not be considered.

6. That on February 6, 1919, the defendant, your petitioner herein, filed with the Supreme Court of Pennsylvania, a petition setting forth that the judgment of the Court of Common Pleas of Schuylkill County aforesaid, is based upon an award of the Compensation Board, which is predicated on findings of fact, which are
not sustained by any evidence, and the defendant was thus
114 deprived of a right secured to it by the XIV Amendment to
the Federal Constitution. That it could not properly present to the Supreme Court of Pennsylvania the Federal questions involved in its appeal unless permitted to submit the notes of testimony for the Court's review. It therefore prayed leave to print the testimony attached to its petition as part of the record in its paper book, and to argue the questions arising thereon at the argument to be had on its appeal, but on February 10, 1919, the Supreme Court of Pennsylvania denied the prayer of the said petition.

7. That in the formal assignments of error filed by your petitioner in the Supreme Court of Pennsylvania, it formally excepted to the opinion of the Court of Common Pleas of Schuylkill County adopting and affirming the decision of the Workmen's Compensation Board, and dismissing the defendant's appeal therefrom, inter alia, in the following particulars:

"7. The Court below erred in dismissing defendant's fifteenth exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

The award of the Compensation Board was in conflict with the provisions of the Act of Congress of April 22, 1908, and supplements thereto, known as the Federal Employers' Liability Act, and in violation of Article 1, Section 8 of the Constitution of the United States.

8. The Court below erred in dismissing defendant's sixteenth exception to the opinion of the Workmen's Compensation Board, the said exception being as follows:

The award of the Compensation Board was in violation of the XIV Amendment to the Constitution of the United States in that it deprives this defendant of its property without due process of law.

115 9. The Court below erred in holding that:

It may be regarded as settled in Pennsylvania that the Courts have nothing to do with the findings of fact made by the Referee and affirmed by the Compensation Board, as these findings are to be regarded as final."

8. That on March 24, 1919, the judgment of the Court of Common Pleas of Schuylkill County was affirmed by the Supreme Court of Pennsylvania on the ground that the findings of fact of the Workmen's Compensation Board were conclusive. Whereupon on March 31, 1919, a petition for a re-argument was filed with the Supreme Court of Pennsylvania by your petitioner herein, which petition was denied by the said Court on April 14, 1919.

9. Your petitioner avers that in the argument had before the Honorable, the Justices of the Supreme Court of Pennsylvania upon its appeal, it was not permitted by the said Court to present and argue the Federal questions raised by the assignments of error, set forth above, but when Counsel for your petitioner attempted to argue thereon, he was directed and commanded by the Court to desist under penalty of having the appeal quashed. Your petitioner's contention that it had a right, privilege and immunity under the Act of Congress of April 22, 1908, Chapter 149, known as the Federal Employers' Liability Act, was denied by the said Supreme Court of Pennsylvania, and judgment was entered against your petitioner as aforesaid.

10. Your petitioner avers that the said judgment of the Supreme Court of Pennsylvania is the judgment of the highest Court of the State of Pennsylvania, and is final, and denies to your petitioner a right and privilege under the Act of Congress aforesaid, and the right secured to it by the XIV Amendment to the Constitution of the United States, as claimed by your petitioner and consistently asserted throughout the foregoing proceedings.

116 11. That on April 16, 1919, your petitioner applied to the Honorable J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, and filed in the said Supreme Court of Pennsylvania its petition for a Writ of Error to bring before the Honor-

able Supreme Court of the United States for review, and correction, the errors complained of by the final judgment aforesaid of the Supreme Court of Pennsylvania, but on April 21, 1919, the writ aforesaid was denied by the Honorable, the Chief Justice of the Supreme Court of Pennsylvania.

12. Wherefore, your petitioner prays that a writ of error may be allowed and issued to the Supreme Court of Pennsylvania to bring up before the Supreme Court of the United States, for review the said order and judgment of the said Supreme Court of the State of Pennsylvania, affirming the judgment in favor of the plaintiff as entered by the Court of Common Pleas of Schuylkill County, State of Pennsylvania, and that your petitioner may have such other and further relief in the premises as may be just.

And your petitioner will ever pray, etc.

[SEAL.]

PHILADELPHIA AND READING RAILWAY COMPANY,
C. H.,
By GEO. ZIEGLER,
Secretary.

COUNTY OF PHILADELPHIA,
State of Pennsylvania, ss:

George Ziegler being duly sworn according to law deposes and says that he is Secretary of Philadelphia and Reading Railway Company, the petitioner above named, and that the facts set forth in the foregoing petition are true.

GEO. ZIEGLER.

Sworn to and subscribed before me this 5th day of May, A. D. 1919.

J. V. HARE,
Notary Public.

Commission expires March 1, 1923.
[SEAL.]

[Endorsed:] No. —. Supreme Court of the United States. October Term, 1918. Philadelphia and Reading Railway Company, Plaintiff in Error, vs. Margaret L. Hancock. Petition for Writ of Error to the Supreme Court of Pennsylvania. Filed in Supreme Court, June 2, 1919. Philadelphia. George Gowen Parry, Attorney at Law, 609 Franklin Building, Philadelphia.

117 UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Margaret L. Hancock and Philadelphia & Reading Railway Company, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said state, on the ground of their being repugnant to the

118 Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Philadelphia & Reading Railway Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the tenth day of May, in the year of our Lord one thousand nine hundred and nineteen.

(Signed) JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed to operate as a supersedeas.
(Signed) MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. October Term, 1918. Philadelphia & Reading Railway Company, Pl'ff. in Error, vs. Margaret L. Hancock. Writ of Error. Filed in Supreme Court, Philadelphia, May 31, 1919.

119 UNITED STATES OF AMERICA, ss:

To Margaret L. Hancock, Greeting: You are hereby cited and admonished to be and appear at a Supreme Court of the United

States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Pennsylvania, wherein Philadelphia & Reading Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, this tenth day of May, in the year of our Lord one thousand nine hundred and nineteen.

(Signed) MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

And now May 14, 1919, Service accepted.

L. L. FRANK,
Att'y for Margaret L. Hancock.

[Endorsed:] Filed in Supreme Court, May 31, 1919, Philadelphia.

120 Know all men by these presents, That we, Philadelphia and Reading Railway Company as principal, and United States Fidelity and Guaranty Company, of Baltimore, Maryland, as sureties, are held and firmly bound unto Margaret L. Hancock in the full and just sum of Fourteen Thousand ($14,000.00) dollars, to be paid to the said Margaret L. Hancock, her certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this Seventh day of May, in the year of our Lord one thousand nine hundred and nineteen.

Whereas, lately at a hearing on appeal before the Supreme Court of Pennsylvania, in a suit depending in said Court, between Margaret L. Hancock vs. Philadelphia and Reading Railway Company, a judgment was rendered against the said defendant and the said defendant having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Margaret L. Hancock citing and admonishing her to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said defendant shall prosecute said writ to effect, and answer all

damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

C. H. [SEAL.]

[SEAL.] PHILADELPHIA AND READING RAILWAY COMPANY.

By AGNEW T. DICE,
President.

Attest:
GEO. ZIEGLER,
Secretary.

[SEAL.] UNITED STATES FIDELITY AND GUARANTY CO.,

By HENRY STROUSE,
Res. Vice Pres.

Attest:
EDWARD J. FISHER,
Resident Secretary, Pro Tem.

Sealed and delivered in presence of:
——— ———.
——— ———.
——— ———.

Approved by:
MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Filed in Supreme Court, May 31, 1919, Philadelphia.

121 United States Fidelity and Guaranty Company,
Zebley & Strouse, Managers,
Real Estate Trust Building,
Philadelphia, Pa.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

On this 7th day of May, A. D. 1919, before me, the subscriber, a Notary Public of the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared Henry Strouse, who being duly sworn, doth depose and say that he is the Resident Vice-President of the United States Fidelity and Guaranty Company, of Baltimore, a corporation created by and existing under the laws of the State of Maryland, with offices in the Real Estate Trust Building, southeast corner of Broad and Chestnut streets, Philadelphia. The amount of capital paid in cash is $3,000,000, is divided

into sixty thousand shares, all of which have been issued at a par value of $50 each. The last sale of stock of said Company was on the 12th day of April, A. D. 1919, at which time 20 shares were sold for $143. per share.

The total amount for which the United States Fidelity and Guaranty Company was liable as surety on September 30, 1918, was $1,021,378,386.82.

The above affidavit is given in compliance with Rule 10, adopted by the Board of Judges of the Courts of Common Pleas of Philadelphia County for regulating the approval of corporations as surety in judicial proceedings.

HENRY STROUSE.

Sworn and subscribed to before me, the day and year aforesaid.

([Seal Howard S. Reynolds, Notary Public, Philadelphia, Pa.]

HOWARD C. REYNOLDS,
Notary Public.

Notary Public commission expires Feb. 21, 1923.

Report of Charles O. Hall, Auditor of the Insurance Department of Maryland.

Statement of the Condition of the United States Fidelity and Guaranty Company at the Close of Business, December 31, 1916.

Assets.

Bonds and Stocks—Market Value December 31, 1916	$8,930,078.44
Real Estate	720,608.11
Mortgage Loans	18,800.00
Loans secured by Collateral	29,399.00
Cash on Hand and in Depositories	1,512,855.23
Premiums in course of collection, not over three months due	1,610,076.54
Accounts with Suspended Banks	87,354.29
Deposits with New York Compensation Commission and Workmen's Compensation Reinsurance Bureau	111,152.48
Interest due and accrued	152,390.93
Advances secured	80,761.75
Equity in New York Excise Funds	80,328.00
Subscriptions Due—Department Guaranteed Attorneys	77,063.47
Other Assets	318,157.71
	$13,729,025.95

Liabilities.

Capital Stock paid in Cash		$3,000,000.00
Due for Return Premiums and Reinsurance		89,862.15
Munich Reinsurance Company Reserve Account and First Reinsurance Company Reserve Account		51,163.94
Reserve for Taxes and Expenses in Transit		216,816.76
Commissions accrued on uncollected premiums		314,324.97
Due United States Government, Federal Income Tax Deducted from Salaries		1,059.50
Premium Reserve Computed in Accordance with Requirements of New York Insurance Department	$4,825,292.39	
Reserve for Claims Admitted and Not Admitted, all Departments, in Accordance with New York Laws	3,025,080.20	
Surplus	2,205,426.04	
		10,055.798.63
Total Liabilities		$13,729,025.95

(Signed) CHAS. O. HALL,
Examiner for Treasurer of Maryland.

It is stipulated and agreed, as set forth in the application for approval of the United States Fidelity and Guaranty Company, that all moneys and securities received by said Company from any person or persons, as indemnity for suretyship, will be kept in a separate and ear-marked account.

From the report of Sussex D. Davis, Esq., and Philippus W. Miller, Esq., the auditors appointed by the Board of Judges, their opinion contained in said report is as follows:

Findings.

First. That the United States Fidelity and Guaranty Company has a full paid capital of	$3,000,000.00
And a surplus of	2,147,261.43
	$5,147,261.43

Second. That it may be accepted as sole surety by your Honorable Courts with safety in any case in which the principal sum or amount in controversy for which security is to be entered shall not be greater than $514,726.14, being 10 per cent. of the Company's combined capital and surplus.

(Signed) SUSSEX D. DAVIS,
(Signed) PHILIPPUS W. MILLER,
Auditors.

April 11, 1919.

The above is taken from the application made by the United States Fidelity and Guaranty Company, as filed January 2, 1919, with the prothonotary of the Courts of Common Pleas, of Philadelphia County, in accordance with Rule 10, adopted by the Board of Judges of the said Courts.

UNITED STATES FIDELITY AND GUARANTY COMPANY,
By ZEBLEY & STROUSE,
Resident Agents.

[Endorsed:] No. —. C. P. No. —. — Term 19—. Margaret L. Hancock vs. Phila. & Reading Rwy. Co. Application for approval as surety. Security for apprvl. Amount of bond, $14000. United States Fidelity and Guaranty Company of Baltimore, Md., is approved as surety in above case. —— ——, Judge. —— 19—. Filed in Supreme Court, Philadelphia, May 31, 1919.

122 Supreme Court of the United States, October Term, 1918,

PHILADELPHIA AND READING RAILWAY COMPANY, Plaintiff in Error,

vs.

MARGARET L. HANCOCK.

Præcipe to Bring Up Record.

To Honorable William A. Stone, Prothonotary, Supreme Court of Pennsylvania.

SIR:

Please remit to the Supreme Court of the United States as a part of the record in the above case the following:

Pleadings, consisting of claim petition and *answer*,
Notes of testimony taken at the trial before the Workmen's Compensation Board,
Opinion of the Workmen's Compensation Board,
Exceptions thereto and appeal to the Court of Common Pleas of Schuylkill County,
Opinion of the Court of Common Pleas of Schuylkill County,
Assignments of Error to Supreme Court of the State of Pennsylvania,
Petition of appellant to the Supreme Court of the State of Pennsylvania for leave to bring up the notes of testimony with the record, and decree of the Court thereon,
Opinion of the Supreme Court of the State of Pennsylvania.

And such other matters of form as may be necessary for the proper presentation of the record in order that the same may be remitted to the Supreme Court of the United States in accordance

with the writ of error directing the remitting the record and proceedings aforesaid, with all things concerning the same.

GEORGE GOWEN PARRY,
Att'y for Appellant, Philadelphia and Reading Railway Company.

[Endorsed:] Supreme Court of the United States, October Term, 1918. Philadelphia and Reading Railway Company, plaintiff in error, vs. Margaret L. Hancock. Præcipe to bring up record. Filed in Supreme Court May 31, 1919, Philadelphia. George Gowen Parry, 415 Reading Terminal, Philadelphia.

123 Supreme Court of the United States, October Term, 1918.

PHILADELPHIA AND READING RAILWAY COMPANY, Plaintiff in Error,

vs.

MARGARET L. HANCOCK.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

C. T. Wolfe being duly sworn according to law deposes and says that he served a copy of the præcipe indicating the portions of the record to be incorporated into the transcript of the record on return of the Writ of Error, on L. L. Frank, Esq., Counsel for the Defendant in Error, by leaving at his office, Mortimer Building, Pottsville, Schuylkill County, Pa., a true and correct copy of the said præcipe, on Saturday, May 31. 1919.

CHARLEMAGNE T. WOLFE.

Sworn to and subscribed before me this 31st day of May A. D. 1919.

[SEAL.] J. V. HARE,
Notary Public.

Commission expires March 1, 1923.

[Endorsed:] Supreme Court of the United States. October Term, 1918. Philadelphia and Reading Railway Company, Plaintiff-in-error vs. Margaret L. Hancock. Proof of Service. Filed in Supreme Court Jun. 2, 1919, Philadelphia. George Gowen Parry, attorney at law, 609 Franklin Building, Philadelphia.

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Assignments of Error.

In the Supreme Court of the United States, October Term, 1918.

No. —.

PHILADELPHIA AND READING RAILWAY COMPANY, Plaintiff-in-error and Defendant Below,

vs.

MARGARET L. HANCOCK, Defendant-in-error and Plaintiff Below.

And now, May 29, A. D. 1919, comes Philadelphia and Reading Railway Company, the plaintiff-in-error and makes and files these, its assignments of error,

1. The Supreme Court of Pennsylvania erred in affirming the judgment of the Court of Common Pleas of Schuylkill County, State of Pennsylvania, for the defendant-in-error, whereby the plaintiff-in-error was denied the right claimed by it under the due process clause of the 14th Amendment to the Constitution of the United States, that a judgment should not be entered against it based upon findings of fact without evidence to support them. The decision of the Supreme Court of Pennsylvania is as follows:

"Per Curiam:

The sole contention of the appellant is that at the time the deceased was killed he was engaged in moving interstate commerce cars. This was a question of fact, and the finding of the Compensation Board was that the cars of coal in the trains upon which the deceased was working were being transported from the mines to different yards within the state, for the convenience of the shipper, and the subsequent shipments of any of them upon which the deceased had worked to a point without the state were made after his death
125 and after the train crew with which he had worked had severed its connection with the cars. This finding was conclusive upon the learned Court below: Poluskiewicz vs. Philadelphia and Reading Coal and Iron Company, 257 Pa. 305.

Appeal dismissed and award affirmed."

2. The Supreme Court of Pennsylvania erred in ruling that the finding of the Workmen's Compensation Board "that the cars of coal upon which the deceased was working were being transported from the mines to different yards within the State for the convenience of the shipper," was conclusive upon the Court of Common Pleas of Schuylkill County, for the reason that the evidence shows no fact to support such a finding. (The decision of the Supreme Court of Pennsylvania is set out in full as part of the first assignment of error.)

3. The Supreme Court of Pennsylvania erred in refusing to examine or review the evidence for the purpose of determining whether or no the plaintiff-in-error was denied a federal right by the judgment of the Court of Common Pleas which was based upon findings of fact unsupported by any evidence.

4. The Supreme Court of Pennsylvania erred in not ruling that the Workmen's Compensation Act of the State of Pennsylvania, (Laws of 1915, page 736) was in violation of the Constitution of the United States in that it denies the plaintiff-in-error due process of law by failing to give the Courts of Common Pleas and the Supreme and Superior Courts of the State of Pennsylvania jurisdiction to consider a question of law arising upon the evidence, the said question of law being whether there was evidence to support the findings of fact upon which the judgment was based.

GEORGE GOWEN PARRY,
Attorney for Philadelphia and Reading Railway Company, Plaintiff-in-Error.

[Endorsed:] Supreme Court of the United States, October Term, 1918. Philadelphia and Reading Railway Company, Plaintiff-in-error, vs. Margaret L. Hancock. Assignments of error. Filed in Supreme Court June 2, 1919, Philadelphia. George Gowen Parry, attorney at law, 415 Reading Terminal, Philadelphia.

126 Supreme Court of the United States, October Term, 1918.

PHILADELPHIA AND READING RAILWAY COMPANY, Plaintiff in Error,

vs.

MARGARET L. HANCOCK.

To Honorable William A. Stone, Prothonotary, Supreme Court of Pennsylvania.

SIR:

Whereas, a Writ of Error has been allowed by the Supreme Court of the United States directed to the Suprem- Court of Pennsylvania in the above entitled case, docketed in the Supreme Court of Pennsylvania to No. 64 January Term, 1919, commanding that the record in said cause be sent up as therein commanded;

And whereas, on the 28th day of May, 1919 præcipe to bring up record was filed with the Prothonotary of the Supreme Court of Pennsylvania by George Gowan Parry, Esq., attorney for appellant suggesting and commanding that there be sent up as part of the record inter alia, "Notes of testimony taken at the trial before the Workmen'- Compensation Board" and also "Petition of appellant to the Supreme Court of the State of Pennsylvania for leave to bring up the notes of testimony with the record, and the decree of the Court thereon." Copy of præcipe hereto attached.

The undersigned, counsel of record for Margaret L. Hancock respectfully protest and object to the notes of testimony taken at the trial before the Workmen's Compensation Board and also petition of appellant to the Supreme Court of the State of Pennsylvania for leave to bring up the notes of testimony with the record, and decree of the Court thereon, being included as part of the record to be remitted to the Supreme Court of the United States in the
127 above entitled cause as commanded in said præcipe for the following reasons:

1. Section 409 of the Act of June 2, 1915, P. L. 751 provides "A Referee's finding of fact shall be final, unless the Board shall allow an appeal therefrom as hereinafter provided. The Board's finding of fact shall in all cases be final."

2. In accord with the provisions of the above referred to section of the Act of 1915, the Supreme Court of this State has declared in its opinion in several cases hereinafter cited "that the notes of testimony are not properly a part of the record.

Poluskiewicz v. P. & R. C. & I. Co. 257 Pa. St. 305.
McCauley v. Imperial Woolen Co. 261 Pa. St. 322, (Advance Reports).
Davis vs. Smith, 262 Pa. St. 432 (Advance Reports).

3. The notes of testimony not being properly a part of the record in above cause in this court, the same should not be sent up to the United States Court as part of the Record. The notes of testimony not being a part of the record, the petition filed by Counsel for the Railroad Company for leave to bring up as part of the Record the notes of testimony with the Record, can not in this manner make part of the Record that which was excluded by the court and should therefore not be sent up as part of the Record.

4. For the reasons above set forth, counsel for Margaret L. Hancock respectfully insist that the notes of the testimony and also the petition of the appellant for leave to bring up the notes of testimony with the record are not properly a part of the record in the Supreme Court of Pennsylvania and should not be included in the record of this cause remitted and certified to the Supreme Court of the United States.

L. L. FRANK,
R. A. REICK,
Counsel for Margaret L. Hancock.

128 Supreme Court of the United States, October Term, 1918.

PHILADELPHIA AND READING RAILWAY COMPANY, Plaintiff in Error,

vs.

MARGARET L. HANCOCK.

Præcipe to Bring Up Record.

To Honorable William A. Stone, Prothonotary, Supreme Court of Pennsylvania.

SIR:

Please remit to the Supreme Sourt of the United States as a part of the record in the above case the following:

Pleadings, consisting of claim petition and answer.

Notes of testimony taken at the trial before the Workmen's Compensation Board.

Opinion of the Workmen's Compensation Board.

Exceptions thereto and appeal to the Court of Common Pleas of Schuylkill County.

Opinion of the Court of Common Pelas of Schuylkill County.

Assignments of Error to the Suprem- Court of the State of Pennsylvania.

Petition of appellant to the Supreme Court of the State of Pennsylvania for leave to bring up the notes of testimony with the record, and decree of the Court thereon.

Opinion of the Supreme Court of the State of Pennsylvania.

And such other matters of form as may be necessary for the proper presentation of the record in order that the same may be remitted to the Suprem- Court of the United States in accordance with the writ of error directing the remitting the record and proceedings aforesaid, with all things concerning the same.

GEORGE GOWAN PARRY,
Att'y for Appellant, Philadelphia and Reading Railway Company.

May 28, 1919.

129 Endorsement: Supreme Court of the United States, October Term, 1918. Philadelphia and Reading Railway Company, Plaintiff in Error, vs. Margaret L. Hancock. Præcipe to Bring up Record. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

Endorsement: Supreme Court of the United States, October Term, 1918. Philadelphia and Reading Railway Company, Plaintiff in Error, v. Margaret L. Hancock. Objections to Præcipe. Filed in Supreme Court June 9, 1919. Philadelphia. L. L. Frank, R. A. Reick, Attorneys for Margaret L. Hancock.

130 I, J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, do hereby certify, that William A. Stone was, at the time of signing the annexed attestation, and now is, Prothonotary of the said Supreme Court of Pennsylvania, in and for the Eastern District, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 4th day of June one thousand nine hundred and nineteen.

J. HAY BROWN.

I, William A. Stone, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do certify, that the Honorable J. Hay Brown by whom the foregoing certificate was made and given, was, at the time of making and giving the same, and is now, Chief Justice of the Supreme Court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said Supreme Court of Pennsylvania, in and for the *the* Eastern District, at Philadelphia, this 3rd day of June, one thousand nine hundred and nineteen.

[Seal of the Supreme Court of Pennsylvania.]

WILLIAM A. STONE.

131 STATE OF PENNSYLVANIA,
Eastern District:

I, Rudolph M. Schick, Deputy Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the papers referred to in the Præcipe to Bring up Record, in the above entitled cause, so full and entire as appears of Record in said Court, and also a true copy of a protest against attaching certain of said papers thereto.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Philadelphia, this 9th day of June, A. D. 1919.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

RUDOLPH M. SCHICK,
Deputy Prothonotary.

Endorsed on cover: Filed No. 27,170. Pennsylvania Supreme Court. Term No. 415. Philadelphia and Reading Railway Company, plaintiff in error, vs. Margaret L. Hancock. Filed June 18th, 1919. File No. 27,170.